

TWO HISTORIC TRIALS

IN

RED FORT

~~is the~~

AN AUTHENTIC ACCOUNT OF THE

TRIAL

BY

A GENERAL COURT MARTIAL

OF

Captain SHAH NAWAZ KHAN, Captain P. K. SAHGAL
AND Lt G. S. DHILLON

AND

THE TRIAL

BY

A European Military Commission
of

Emperor Bahadur Shah.

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- 3 5D to 5Q by DW7 Lt.-Col A D Loganadan.
- 4 5A to 5Y by DW12 Capt. R M Arshad.

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- 1 FFFF to NNNN by PW2 Lt. D C Nag
- 2 SSSS to VVVV by DW1 Saburo Ohta, Japanese Foreign Officer
- 3 WWWW by DW5 Major General Tudashi Katakura
- 4 XXXX and YYYY by DW6 S A Ayer
- 5 5C by DW7 Lt.-Col. Loganadan
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FOREWORD

It is right that the record of the trial by General Court Martial of the three officers of the Indian National Army should be published in book form and made easily accessible to the public. No trial in India either by Court Martial or in the Civil Courts has attracted so much public attention or has dealt with issues of such fundamental national importance. The legal issues were important enough, involving as they did questions of that rather vague and flexible body of doctrine known as International Law. But behind the law there was something deeper and more vital, something that stirred the subconscious depths of the Indian mind. Those three officers and the Indian National Army became symbols of India fighting for her independence. All minor issues faded away, even the personalities of the three men being tried for an offence involving a death sentence became blurred in that larger picture of India. The trial dramatised and gave visible form to the old contest—England *versus* India. It became in reality not merely a question of law or of forensic eloquence and ability—though there was plenty of ability and eloquence—but rather a trial of strength between the will of the Indian people and the will of those who hold power in India. And it was that will of the Indian people that triumphed in the end. Therein lies its significance, therein lies the promise of the future. Able lawyers conducted the case on either side, and the defence was fortunate in having some of the best legal talents in India: the Judges of the Court Martial played a worthy part and the Judge Advocate delivered a notable summing-up. And, finally, the Commander-in-Chief put the final touches to a historic episode by a decision which showed vision and true judgment. But the triumph was that of the Indian people as a whole, civil and military, who had pronounced judgment already and their verdict was too powerful to be ignored.

Lawyers will study and analyse the many aspects of this trial. Another precedent will burden their shelves. But lovers of freedom everywhere will rejoice that even the law, strait-laced as it is by convention and precedent, was compelled to recognize the right of a people to fight for their freedom.

The story behind this trial was strange enough. A few months ago very few persons in India knew anything about it. Gradually, it unfolded itself as the trial proceeded and it gripped the public imagination. No more suitable venue for it than the Red Fort of Delhi could have been found. Every stone in that historic setting tells a story and revives a memory of long ago. Ghosts of the past, ghosts of the Moghuls, of Shah Jahan, of Bahadur Shah, proud cavaliers pass by on prancing horses, processions wend their way. You hear the

trump of armed men, and the tinkling of silver bells on women's feet. Ambassadors came from far countries to pay court to the splendid court of the Moghul Emperors, viceroys and governors and the great Amirs came with their retenues to report to their Sovereign. There was a hum of life and activity, for this was the hub of a vast and rich empire.

Eighty-eight years ago another trial was held in this Red Fort of Delhi, the trial of the last of a great line. That trial put a final end to a chapter of India's history. Was this second trial held in the final weeks of 1945, to mark the end of another chapter? Surely, it is a presage of that end, and those who watched it from day to day, or those who will read about it in the printed page will sense how that end draws near and the page is being turned for us to begin the new chapter. But it is not necessary to go to the trial for this. The very air of India is full of that change and turning over into something bright and new, where history can be written by us in a different fashion.

Jai Hind !

The 17th January, 1946
NEW DELHI

} Jawaharlal Nehru

Introduction

This is a complete and authentic account of the first I N A trial and provides invaluable material for historians and students of International Law. In the compiling of this volume I had unique facilities inasmuch as I was not only able to get official copies of day-to-day proceedings, which Col Bobb of the Public Relations Directorate, G H Q, so kindly supplied to the Press, but had access to all the Defence files which Mr Bhulabhai Desai was good enough to place at my disposal.

The proceedings of the trial of Emperor Bahadur Shah recorded here provide a historical perspective for the I. N. A. trial. The common features of the two trials will not go unnoticed. The official record of the trial of Bahadur Shah from which I have reproduced the address of the Judge-Advocate and the accused's statement have never so far been published though the trial was held eighty-eight years ago. The proceedings of this trial incidentally throw much light on the causes of the Mutiny of 1857. There is no reference to International Law in that trial, which probably was not recognized in those days.

I am grateful to Pandit Jawaharlal Nehru, who, despite heavy pressure of work, found time to write a foreword for the book, to Mr Justice Achhru Ram for supplying me with copies of the statements of the three accused officers, to Dr Kailash Nath Katju, to Mr Shamlal and Mr Raghunandan Saran for giving me several valuable suggestions, to Mr. Rajendra Narain, one of the Defence Counsel, Mr. Binay Bhushan Datta, a lawyer friend from Comilla, Bengal, and Mr R. K. Sharma for the assistance they gave me in arranging the rather unwieldy manuscripts and for reading proofs. I am indebted to Mr Sarat Chandra Bose, Leader of the Opposition in the Central Assembly, for his kind message of appreciation. My thanks are also due to Sir Naushirwan Engineer and Lt-Col P Walsh.

Every care has been taken to avoid obvious mistakes, but I have not tried to improve upon the language of the official records in which many mistakes had crept in due to the inefficiency of the several interpreters. I have not included any extraneous matter in this volume, which does not form part of the proceedings.

Delhi January 26, 1946

Moti Ram

(vi)

25, Canning Lane,

NEW DELHI,

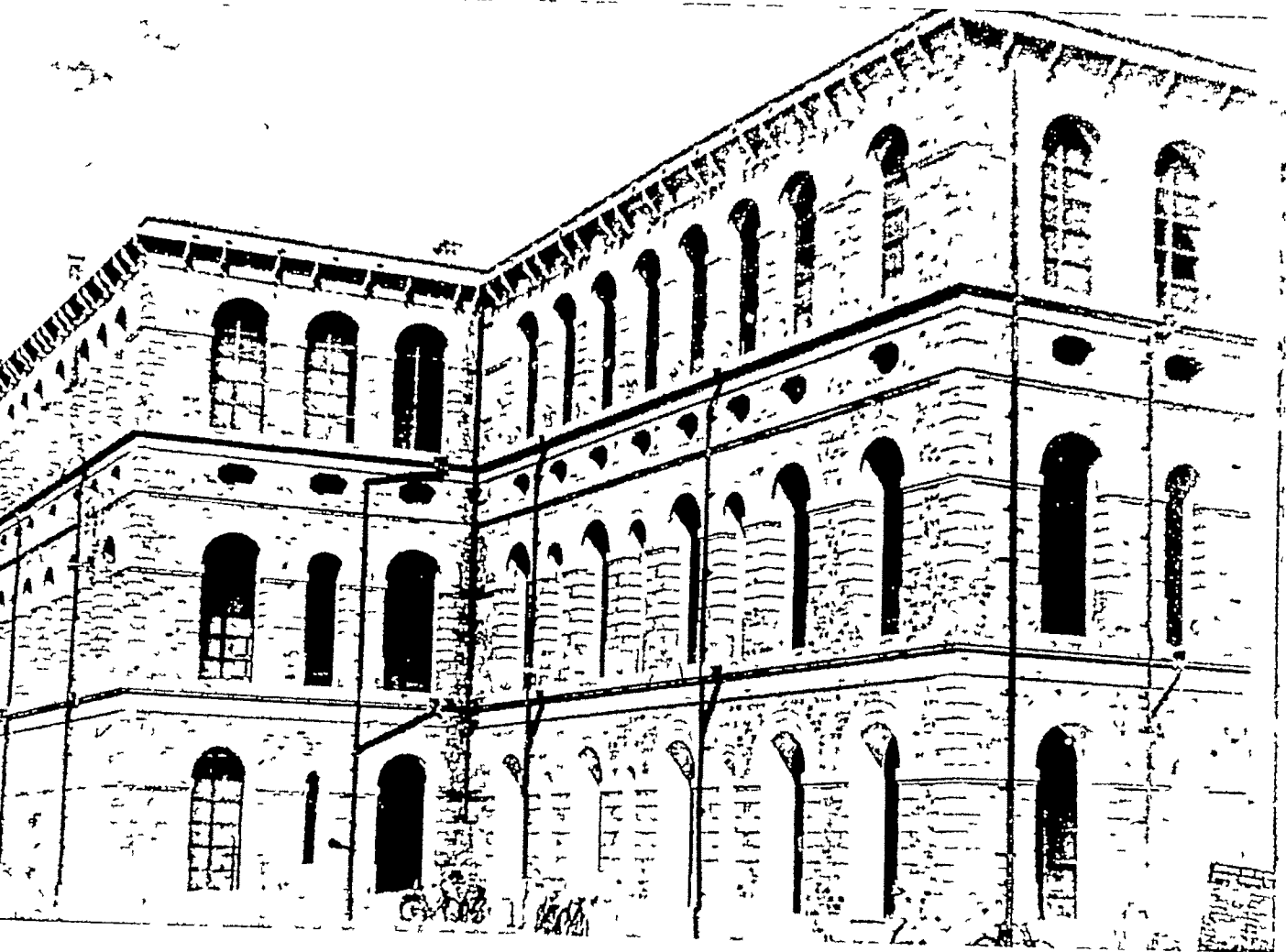
rd January, 1946

I congratulate my friend, Shri Moti Ram, on his enterprise in bringing out in book form the proceedings of the first I N A Trial, held in Red Fort, Delhi To those interested in the study of Indian history and in the movement for Indian independence, the proceedings of the first I N A Trial call to mind the trial of Emperor Bahadur Shah held in the same place nearly a century ago Emperor Bahadur Shah fought and fell, so have the I N A But—

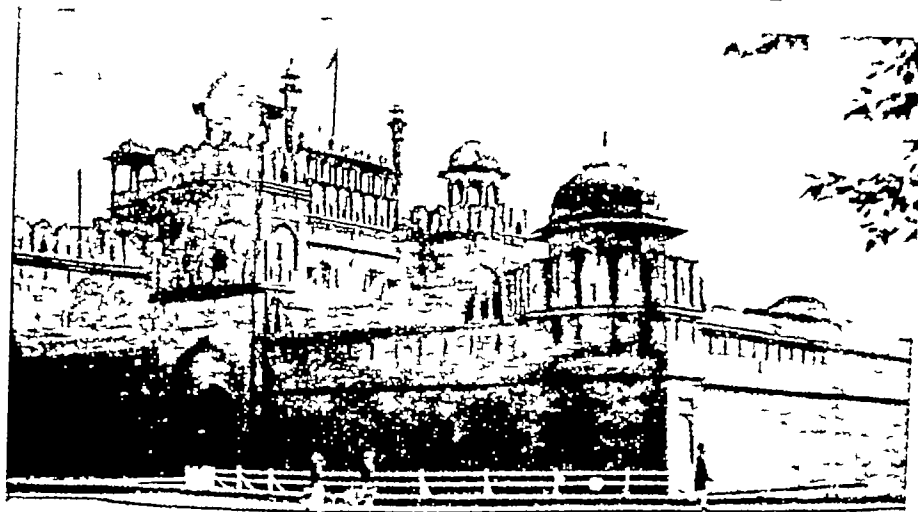
“Freedom’s battle once begun,
Bequeathed by bleeding sire to son,
Though baffled oft, is ever won”

SARAT CHANDRA BOSE

An outer view of the dormitory where the trial was held

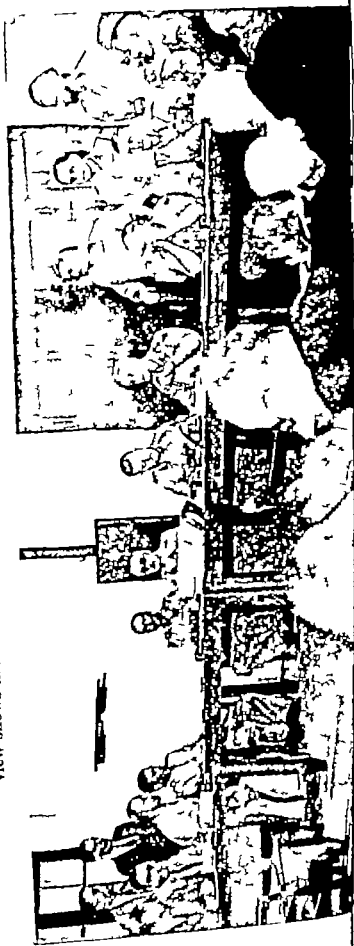


A view of the Red Fort





Two views of the opening of the Court The first shows the Defence Counsel The second view shows the members of the Court Martial and the Judge-Advocate



THE TRIAL

GENERAL COURT MARTIAL, Red Fort, Delhi.

From November 5, 1945, to December 31, 1945

JUDGES

- 1 Major-General Blaxland, C B , O B.E.
- 2 Brigadier A G H Bourke
- 3 Lt-Col C R Stott, M C , I R R O
- 4 Lt-Col T I Stevenson, C I E , M B E , M C , R , Garh Rif
- 5 Lt-Col Nasir Ali Khan, Rajput Regiment
- 6 Major B Pritam Singh, I A C
- 7 Major Banwar Lal, 15th Punjab Regiment

WAITING MEMBERS

- 1 Lt-Col C H Jackson, I R R O
- 2 Major S S Pandit, I Punjab Regiment
- 3 Capt Gurdial Singh Randhawa, (C R O. 26) 13 D C O Lancers

JUDGE ADVOCATE

Col F C A Kerin, O B E , D J A G , Central Command

COUNSEL FOR PROSECUTION

- 1 Sir N P. Engineer, Advocate-General of India.
- 2 Lt-Col P Walsh, Military Prosecutor

DEFENCE COUNSEL

- 1 Pandit Jawaharlal Nehru
- 2 The Rt Hon Sir T B Sapru
- 3 Mr Bhulabhai J Desai
- 4 Dr Kailash Nath Katju
- 5 R B Badri Das
- 6 Mr. Asaf Ali
- 7 Kanwar Sir Dalip Singh, Ex-Judge, Lahore High Court
- 8 Bakshi Sir Tek Chand, Ex-Judge, Lahore High Court
- 9 Mr P N Sen, Ex-Judge, Patna High Court.
- 10 Mr Inder Deo Dua
- 11 Mr Rajendra Narain
- 12 Mr Sri Narain Andley
- 13 Mr Gobind Saran Singh
- 14 Mr Jugal Kishore Khanna.
- 15 Mr Manak Lal S Vakil
- 16 Mr Sultan Yar Khan
- 17 Shiv Kumar Shastri

ACCUSED

- 1 Captain Shah Nawaz Khan, 1/14th Punjab Regiment.
- 2 Captain P. K. Sahgal, 2/10th Baluch Regiment.
- 3 Lieut Gurbakhsh Singh Dhillon, 1/14th Punjab Regiment.

When the court met at 10 a.m. on November 5 the Judge Advocate, Col. Kerin called out the names of members of the court and of its stenographers and prosecution counsel. After all of them had answered present, the court asked the name of the Senior Defence Counsel. Sir Tej Bahadur Sapru replied that owing to ill health he had asked Mr. Bhulabhai Desai to conduct the case. He also introduced other counsel to the court.

The President of the court remarked "I take it you are all qualified to appear in terms of the Indian Army Act."

Mr. Desai answered 'yes'

The accused were then asked whether they objected to being tried by the President or any member of the court. "No, Sir," was the deliberate answer of the three accused.

Afterwards the Judge Advocate administered oath to the members of the court and the stenographers.

The oath to the Judges was 'I swear by Almighty God that I will duly administer justice according to the Indian Army Act without partiality, favour or affection and if any doubts shall arise, then according to my conscience, to the best of my understanding and the custom of war in like cases, and that I will not divulge the sentence of this court martial until it shall be published by authority and further cover the vote or opinion of any members of this court martial unless required to give evidence thereof by a court of justice or a court martial in due course of law. So help me God.' The Christian members of the court took oath with Bible in hand, while a Maulvi and a Sikh Giani and a Pandit were called in to hand over the *Quran*, the *Guru Granth Sahib* and the *Gita* to the Muslim, Sikh and Hindu members of the court respectively.

CHARGE SHEET

The following charge sheet was read out to the accused to which they pleaded "not guilty."

The accused No. IC 58 Capt. Shah Nawaz Khan, 1/14th Punjab Regiment, No. IC 226 Capt. P. K. Sahgal, 2/10th Baluch Regiment, and No. IC 336 Lieut. Gurbakhsh Singh Dhillon, 1/14th Punjab Regiment, all attached C. S. D. I. C. (1), Delhi, Indian Commissioned Officers, are charged with

1st Charge I.A.A. Section 41 (against all three accused jointly)

Committing a civil offence, that is to say waging war against the King contrary to Section 121 Indian Penal Code in that they together at Singapore in Malaya, at Rangoon, in the vicinity of Popa in the vicinity of Kyaukpadaung, and elsewhere in Burma, between the month of September 1942 and the 26th day of April 1945 did wage war against His Majesty the King Emperor of India,

2nd Charge I.A.A. Section 41 (against the said Lt. Gurbakhsh Singh Dhillon alone)

Committing a civil offence, that is to say murder contrary to Section 302 Indian Penal Code, in that he (Lieut. Dhillon) at or near Popa Hill in Burma, on or about March 6 1945 by causing death of Hari Singh, did commit murder,

Committing a civil offence, that is to say, abetment, contrary to Section 109, Indian Penal Code, of an offence punishable under Section 302, Indian Penal Code, in that he (Capt Sahgal) at or near Popa Hill, on or about March 6, 1945, did abet the offence of the murder of Hari Singh as specified in the second charge hereof, which offence was committed in consequence of such abetment,

3rd Charge I A A Section 41 (against the said Capt P K Sahgal alone)

Committing a civil offence, that is to say, murder, contrary to Section 302, Indian Penal Code, in that he (Lieut Dhillon) at or near Popa Hill in Burma, on or about March 6, 1945, by causing the death of Duli Chand, did commit murder,

4th Charge I A A Section 41 (against the said Lt Gurbakhsh Singh Dhillon alone)

Committing a civil offence, that is to say, abetment, contrary to Section 109, Indian Penal Code, of an offence punishable under Section 302, Indian Penal Code, in that he (Capt Sahgal) at or near Popa Hill, on or about March 6, 1945, did abet the offence of the murder of Duli Chand, as specified in the fourth charge hereof, which offence was committed in consequence of such abetment,

5th Charge I A A Section 41 (against the said Capt P K Sahgal alone)

Committing a civil offence, that is to say, murder, contrary to Section 302, Indian Penal Code, in that he (Lt Dhillon) at or near Popa Hill in Burma, on or about March 6, 1945, by causing the death of Daryao Singh, did commit murder,

6th Charge I A A Section 41 (against the said Lt. Gurbakhsh Singh Dhillon alone)

Committing a civil offence, that is to say, abetment, contrary to Section 109, Indian Penal Code, of an offence punishable under Section 302, Indian Penal Code, in that he (Capt. Sahgal) at or near Popa Hill, on or about 6th March 1945, did abet the offence of the murder of Daryao Singh, as specified in the sixth charge hereof, which offence was committed in consequence of such abetment,

7th Charge I A A Section 41 (against the said Capt P K Sahgal alone)

Committing a civil offence, that is to say, murder, contrary to Section 302, Indian Penal Code, in that he (Lt Dhillon) at or near Popa Hill in Burma, on or about March 6, 1945, by causing the death of Dharam Singh, did commit murder,

8th Charge I A A Section 41 (against the said Lt Gurbakhsh Singh Dhillon alone)

Committing a civil offence, that is to say, abetment, contrary to Section 109, Indian Penal Code, of an offence punishable under Section 302, Indian Penal Code, in that he (Capt Sahgal) at or near Popa Hill, on or about March 6, 1945, did abet the offence of the murder of Dharam Singh, as specified in the eighth charge hereof, which offence was committed in consequence of such abetment,

9th Charge I A A Section 41 (against the said Capt P K Sahgal alone)

Committing a civil offence, that is to say, abetment, contrary to Section 109, Indian Penal Code, of an offence punishable under Section 302, Indian Penal Code, in that he (Capt Shah Nawaz Khan) at or near Popa Hill in Burma, on or about March 29, 1945, did abet the murder by one Khazin Shah and one Aya Singh of Gunner Mohammad Hussain of H K S R A, which offence was committed in consequence of such abetment

10th Charge I A A Section 41 (against the said Capt Shah Nawaz Khan alone)

(Sd) — Col,
Comdg,
C S D. I C (1),
Delhi.

Judge Advocate. Gentlemen do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with and that you have been prejudiced thereby or on the ground that you have not had sufficient opportunity for preparing your defence?

Mr Desai. We are asking for adjournment on the latter ground.

Mr Desai then read out a written application for three weeks adjournment of the case.

Mr Desai. You will see from this petition that apart from the recital of facts, which are already before you the substantial grounds for adjournment are these:

- (1) That within the last few days a summary of fresh witnesses numbering seven has been given just now;
- (2) The charge has been made just now, and
- (3) That out of 112 witnesses 80 have not been interviewed at all.

Besides it will be conceded that this is a case which is unprecedented in the recorded history as far as one is able to study the matters relating to the military law. It will also save the time of the court if those witnesses who have not been interviewed have been interviewed before the trial begins so that a great deal of the court's time will be saved. What I mean is that if the preparation has been made, probably a good deal of time will be saved because the essential and unessential will have been separated from the evidence which will be necessary and useful to put before the court. For these reasons I submit that we should be granted three weeks adjournment which we have sought in the petition.

Prosecution counsel Sir N P Engineer objected to the application for adjournment, but he added. If you think an adjournment should be given it should be given after I have opened the case after I have called formal evidence as regards the position of the accused in the Indian Army and after I have examined one witness, who will produce most of the documents that are to be exhibited in the case.

Judge Advocate. Gentlemen the Indian Army Rule 70 certainly grants you power to adjourn from time to time and from place to place. But it also imposes another duty upon you and that is that when once the court has assembled and the accused is arraigned the court shall continue and sit from day to day. Now I think I may say that in the circumstances certainly some adjournment would seem to be called for but as to the length of that adjournment that of course is a matter entirely for you.

The court then retired for a short while. When it reassembled the Chairman said that the Court Martial could not be adjourned from time to time like a civil court. The Court Martial had to carry on its proceedings from day to day under the Army Act. The members of the court had considerable amount of work and, in addition, they had to work as members of this court. He pointed out that one of the essentials of justice was that it should be speedy.

He however conceded that taking into consideration the circumstances some adjournment would seem to be called for after Sir N P Engineer had address-

ed the court and the evidence of the first witness had been recorded This procedure, he thought, would be actually to the benefit of the accused

Opening Address by Sir N P. Engineer, Advocate-General of India, Counsel for the Prosecution

Mr President and Members of this Honourable Court

The charges against the accused are under Section 41, Indian Army Act All of them are charged with "waging war against His Majesty the King-Emperor of India, contrary to Section 121, I P C" (charge 1) Lt G S Dhillon is charged with the murder of Hari Singh, Dulichand, Daiyao Singh and Dharam Singh on March 6, 1945, contrary to Section 302, I P C (charges 2, 4, 6 and 8) Capt P K Sahgal is charged with abetting the said murders, contrary to Sections 109 and 302, I P C (charges 3, 5, 7 and 9) Capt Shah Nawaz Khan is charged with abetting the murder of Mohd Husain on March 29, 1945, contrary to Sections 109 and 302, I P C (charge 10) The accused are all Indian Commissioned Officers, and as such they are subject to the Indian Army Act

Capt Shah Nawaz Khan was born in Rawalpindi on January 24, 1914 After attending a course at the Indian Military Academy, Dehra Dun, he was granted a regular commission in the Indian land forces with effect from February 1, 1936, and on the same day relevant details of the grant of this commission were published in the *Gazette of India* In February 1937, he was posted to the 14th Punjab Regiment.

Capt Sahgal was born at Hoshiarpur on January 25, 1917 He also attended a course at the I M A, Dehra Dun, and was granted a regular commission in the Indian land forces with effect from February 1, 1939 Notice of the grant of this commission was published in the *Gazette of India* on February 18, 1939, and he was posted to the 10th Baluch Regiment in February 1940

Lt Dhillon was born at Algou in Lahore district on April 4, 1915 He too attended a course at the I M A, Dehra Dun, on the completion of which he was granted a regular commission in the Indian land forces with effect from April 3, 1940, notice of which appeared in the *Gazette of India* dated June 1, 1940 Shortly after being commissioned, he was posted to the 14th Punjab Regiment

I will first deal with the charge of "waging war against the King-Emperor"

Section 41, Indian Army Act, provides that every person subject to the Act who, either within British India or at any place beyond British India, commits any civil offence shall be deemed to be guilty of an offence against the military law, and, if charged therewith under the section, shall, subject to the provisions of the Act, be liable to be tried for the same by the Court Martial Civil offence is defined in Section 7 (18) as an offence which if committed in British India would be triable by a criminal court

The motive with which the war is waged is immaterial Whether the persons charged with the offence did the act with what they considered to

be a patriotic motive or with a mercenary motive, the offence is nevertheless committed according to law. The question is whether according to law applicable to the accused (in this case, the Indian Army Act read with the relevant provisions of the Indian Penal Code) the offence with which they are charged is committed. The offence in question is committed against the 'duty of allegiance'. This allegiance the accused owed to the Crown at all times and in all circumstances. The allegiance remained with them wherever they might be and they were bound by this allegiance even when they were prisoners of war.

The accused waged war against the King as officers of and by fighting in what was called the Indian National Army. The I.N.A. was composed mostly of officers and men of the Indian Army. The composition consisted of

- (a) Headquarters
- (b) Hindustan Field Group
- (c) 'Sherdil' Guerilla Group
- (d) Special Service Group
- (e) Intelligence Group
- (f) Reinforcement Group

The 1 Hind Field Group consisted of the Headquarters I, II and III Infantry Battalions I A F V Battalion 1 Heavy Gun Battalion, No 1 Engineer Coy No 1 Signal Coy No 1 Medical Company and No 1 Tpt Coy. Guerilla group consisted of the Gandhi Guerilla Regiment Azad Guerilla Regiment and Nehru Guerilla Regiment.

In or about November 1943, i.e. two or three months after Mr Subhas Chandra Bose arrived in Singapore, another Guerilla Regiment was formed which was officially known as No 1 Guerilla Regiment. It was also known as Bose or Subhas Regiment. Shah Nawaz Khan was appointed its Commander. The other regiments were numbered 2 (Gandhi) 3 (Azad) and 4 (Nehru). They were all incorporated in No 1 Division. Later the 2nd and 3rd Divisions were formed. No. 2 Division was composed partly of Indian Military prisoners of war and partly of civilians. No 3 Division was almost entirely composed of civilians. These civilians were mostly recruited by the Indian Independence League in Malaya.

Singapore surrendered to the Japanese on February 15, 1942. On February 17 1942, a large number of prisoners of war were made to march to Ferrer Park in Singapore. Among the prisoners of war so assembled were the 1/14th Punjab Regiment and 5/14th Punjab Regiment. They were under the command of Capt. M Z Kiani. These two regiments were originally distinct, but they were combined into one regiment shortly before the fall of Singapore. One Maj Fujiwara, a Japanese officer addressed the prisoners of war. There were some officers of the Indian Army present among whom was Capt. Mohan Singh of the 1/14th Punjab Regiment. The Indian officers were dressed in the Indian Army uniform and some of them were wearing an armband inscribed with letter 'F'. 'F' stood for Fujiwara a Japanese officer entrusted by the Japanese Government with the work of winning over the Indian Forces to the Japanese side. Major Fujiwara had been doing this work, a considerable time before the fall of Singapore. Major Fujiwara addressed the prisoners of war and he was followed by Capt. Mohan Singh who said "We are going to form an Indian National Army and we are going to fight for the independence of India. You must all join."

The Indian National Army came formally into existence on September 1, 1942. In March 1942, Capt. Shah Nawaz Khan, who was then Commander of

the Neesoon Prisoners of War Camp, addressed from 200 to 300 officers, V C O s and N C O s , all prisoners of war. He said that a conference had been held in Captain Mohan Singh's Headquarters at which resolutions had been passed to the effect that they were all Indians despite their different religions and that they must all fight for the freedom of India. Captain Shah Nawaz Khan then instructed those present to explain the resolutions to the prisoners of war. They agreed to do so. In June 1942, there was a conference held at Bangkok, attended by several delegates, including delegates from various regiments of the Indian Army. Among those present was Capt Mohan Singh. The president of the meeting was Rash Behari Bose, an Indian civilian who had come from Japan. Some resolutions were passed at the conference to the effect that an I N A would be formed from military and civilian Indians in the Far East, and this I N A would be formed under the command of Capt Mohan Singh and that the I N A would fight for the freedom of India. Other resolutions were to the effect that the Indian Independence League would provide the I N. A. with recruits, money, rations and clothes and the Japanese Government would provide the necessary arms and ammunition.

Among the camps where Indian prisoners of war were kept in Singapore were Bidadari Camp, Seletar Camp and Kranji Camp. A large number of the Indian prisoners of war who joined the I. N. A. did so in order to escape the torture and hardship which was inflicted on them and which it was announced would be continued to be inflicted unless they joined the I N A.

In the Indian POW camps efforts were made to induce and compel them to join the I N A , those who resisted were removed to concentration camps. No food was given to them for days and such food as was given was extremely bad. No medical aid was given at all. They were made to lie down on the ground and beaten with a stick about five feet long and two inches thick. They were made to do fatigues and were given sacks which they had to fill with earth and which they were made to carry on a bamboo pole, running at the double. They were made to do such fatigues for about 12 hours a day. Sometimes they were beaten with clubs. Some of the prisoners of war got so desperate that they asked their torturers to shoot them. In reply, they were told "We will not shoot you, if you join the I N A you will save yourself from the trouble, otherwise you will die in this way". They were made to sleep without clothes and bedding on spots infested with ants. The tortures so inflicted on prisoners of war were inflicted by Indians who were themselves prisoners of war and had joined the I N A. Among the persons who were in charge of the concentration camps were Sub Shingara Singh of the 5/14th Punjab Regiment, Capt Abdul Rashid of the 1/14th Punjab Regiment, and Jem. Fateh Khan of the 5/14th Punjab Regiment. On one occasion in August, 1942, Shingara Singh and Fateh Khan came to the camp with 14 armed Sikhs. Fateh Khan said he had come to take them to the I N A. This happened in Kranji camp, where there were about 300 Muslim prisoners of war. They refused to go saying that they would not break their oath to the King. They resisted being taken away to join the I N A. They were fired on and some were killed. One of the Sikhs who had come with Shingara Singh and Fateh Khan was killed. After they left, three Japanese officers and three I N A officers came. The Japanese officers told them that the orders to join the I N A were given by the Japanese Government and had to be obeyed, and that if such a thing happened again severe reprisals in the form of death would be taken by the Japanese. The Muslim soldiers were then taken to a concentration camp and were tortured and beaten and made to do fatigues. In the concentration camp Mohan Singh came and lectured to them that they should volunteer to avoid further trouble and some of them were thus forced to join the I N A.

A similar incident happened in Bidadari Camp in September 1942. The officers and men of the 2/9 Gurkha Rifles were in that camp. Jem. Puran Singh and others who had joined the I N A used to lecture to them to join the I N A. But they refused. The V.C.O.s and subsequently, the N.C.O.s, also were consequently removed to a concentration camp. The men were subsequently told that if they did not join they would be fired upon. On September 24 the sepoys and the followers were told by Jem. Puran Singh to join the I N A. They were told 'Are you not Indians and living in India? Why are you not taking part in the I N A?' When they still refused several of them were beaten one after another. They were told 'you have been warned several times and this is the result of your not obeying our orders.' The men of the Battalion then shouted 'Do not beat us like this. We are prisoners of war of the Japanese and will do fatigues but we will not join the I N A.' The Battalion then rose to its feet. Puran Singh then said, 'Who gave you the order to stand up? You are disobeying orders and doing everything against us. So we will fire upon you.' Jem. Puran Singh ordered the guard to fire and they did so. The Gurkha prisoners of war had no weapons and all that they could do was to throw their chappals at the guards and at the lecture party and to advance on them. Under the orders of Puran Singh the guard fixed bayonets and charged them. Several of the Gurkhas were wounded. They were taken to Bidadari hospital. Even in the hospital they were asked to join the I N A, but they refused. This incident will be deposed by Hav. Walet Bahadur of the 2/9th Gurkha Rifles who was among the prisoners of war and who was wounded.

In December 1942 trouble arose between Mohan Singh and the Japanese. Mohan Singh was arrested by the Japanese and many of the Indian prisoners of war who had joined the I N A. discarded their badges. Some of the officers of the Headquarters however kept their badges.

After the incarceration of Capt. Mohan Singh despite various attempts made by the Committee of Administration, the majority of the I.N.A. officers were unwilling to continue in the I.N.A. On February 10, 1943, a meeting of all the Indian Army officers and V.C.O.s was called by the Committee of Administration where a questionnaire was put to them for answers. One of the questions was. Are you willing to continue in the I N A or not? Those officers who answered in the negative were called to appear before Rash Behari Bose on February 13 1943.

Before the officers appeared before him, printed leaflets were given to them bearing in print the signature of Rash Behari Bose as President of the Council of Action Indian Independence League. In this leaflet it was stated that as regards those who did not wish to remain in the I.N.A. under the present circumstances Rash Behari Bose could only say that he was hardly to blame for the present state of affairs in the army. The leaflet further stated as follows

As you know India's fight against Britain has now reached a critical stage. Mahatma Gandhi has undertaken a three week fast to bring still more pressure on the British to quit India, thus finally shutting the door against any compromise. Our duty now is clear. Unfortunately I shall have no control over those who deliberately choose to quit the I.N.A. at the present juncture. I cannot speak for the Japanese, nor say in what manner or at what place they may be employed by the power whose prisoners they choose to be. 'Those of the officers who do not wish to reconsider their views will have to appear before me at 11.30 a.m. today and give their reasons, before I decide to separate them from the men

After January 1943, recruiting was again done for the I N A and many prisoners of war joined and more were to join the I N A.

The tortures and hardships inflicted on the prisoners of war were so inflicted openly and publicly in POW camps and concentration camps. The accused used to go to the POW camps and the concentration camps. The accused themselves addressed prisoners of war at various places and at various times both before and after December 1942. I will mention a few instances.

In January-February 1943, Capt Shah Nawaz was in Fort Dixon and addressed the officers subedars and jemadars who were prisoners of war. He said that the I N A of Capt Mohan Singh had been disbanded and that a new I N A was being formed. He said that any prisoner of war who wanted to join could do so. He pointed out how badly they were being treated there, but that if they joined the I N A they would be well treated and fed properly. He told them to explain this to prisoners of war and to give a list of the volunteers to the Camp Commandant for despatch to I N A Headquarters at Singapore. No volunteers came forward.

About the end of April or beginning of May 1943, Capt Shah Nawaz was at Port Swettenham. He delivered a lecture to all the Indian prisoners of war there who were paraded for the occasion. He called on them to volunteer to drive the British out of India. He said that they should join the I N A and if they did so they would get good rations and soon be sent to Burma. He said that in the I N A their pay would only be like pocket money, but that when the freedom of India was achieved they would go back to their old rates of pay. He said that volunteers should hand in their names to the Camp Commandant and that on the following day they would be sent to Singapore. No one volunteered on that occasion.

In January 1943, Lt Dhillon was present at one of the lecturing parties when a Jap officer named Iwakuru and Rash Behari Bose addressed some prisoners of war in the cinema hall in the Bidadari Camp.

After the lecture, Lt Dhillon went to the mess and said that he wanted to talk to the persons present there. He said that all officers should unite and join the I N A. Sub-Maj Baburam and Sub Chanan Singh of the 1/14th Punjab Regiment told him that if he had come to speak as he was doing he should clear out at once, he was angry and went away.

In March 1943, Lt Dhillon, accompanied by Maj Dhare, went to Jitra and they lectured to the prisoners of war there. Maj Dhare spoke first and said that the I N A had been formed and that it would only fight in India and obtain her liberation. He said that they would fight with the Japs, but if there was any dishonesty on the part of the Japs once they were in India, the I N A would have their arms and would fight against the Japs. He said the prisoners of war should join the I N A, as that was the best chance they had and that nearly all prisoners of war had already volunteered. Then Lt Dhillon gave a lecture. He said that after Maj Dhare's speech there should be no doubt about what the prisoners of war ought to do. He said that the I N A would only fight in India and would obtain the liberation of India. He said the I N A would get help from the Japs and repeated what Maj Dhare had said.

In March 1943, Lt Dhillon was in Taiping. He delivered a lecture there to the Indian POWs who had not volunteered to join the I N A. He said that he had lectured to the POWs in Singapore and Jitra and that they had all volunteered for the I N A. He said they should also join. He said that the I N A was going to fight to drive the British out of India. He said if they did not join they

would get into trouble. He concluded that they had nothing to fear if the I.N.A. failed, all the blame would fall on the senior officers and other ranks would not be punished.

The effect of what the accused did and said must be considered in the light of the circumstances which then existed. The British forces in Malaya and Singapore had surrendered. The POWs were being treated in the manner aforesaid in POW camps and concentration camps. The Indian sepoy is trained to follow his officer with unquestioning obedience. The accused went about recruiting men for the I.N.A. and among other things gave promises of better treatment and held out veiled threats. The only alternative to joining the I.N.A. was starvation and torture. No wonder then that many men of the Indian Army enlisted in the I.N.A. particularly as they had the example of their own senior officers who had joined the I.N.A.

The evidence will show that the accused recruited men for the I.N.A. took part in the organization of the I.N.A., gave directions and orders for fighting against H.M.'s forces and themselves actually fought against them. In doing so they carried out pre-arranged plans and carried out a common design to wage war along with others.

The training and the fighting was done with British arms which had been captured by the Japanese. The soldiers and officers retained and used their uniform of the Indian Army and in addition they put on badges of the I.N.A. Some of these badges will be produced in evidence.

In about August 1942 Lt. Nag who had also joined the I.N.A. was asked to prepare a so-called I.N.A. Act which he did. This Act followed for the most part the I.A. Act. But one significant addition was the inclusion of the sentence of whipping as a punishment which was originally six stripes a week or less the total not to exceed 24. Subsequently in June 1943 the power to inflict the punishment of whipping was extended to the army commanders and to the Directorate of Military Bureau in cases of serious indiscipline among sepoys and NCOs.

In August 1944, the number of stripes which could be given was increased to 45 or 50 and power to inflict this punishment was given to Divisional Regimental and Battalion Commanders.

In or about the middle of January 1943 an Administrative Committee was formed which was at first concerned with the administrative needs of POWs. It was this Administrative Committee which arranged the propaganda lectures. In or about May 1943 the Directorate of Military Bureau came into existence. Sahgal was the Military Secretary and Shah Nawaz was Chief of General Staff.

On October 21 1943 there was a mass meeting in Singapore of the I.N.A. personnel and Indian civilians. Subhas Chandra Bose, who had come there, addressed the gathering. He announced the establishment of the provisional Government of Free India which would administer the territory occupied by the I.N.A. He announced the names of ministers, among which was the name of Capt. Shah Nawaz Khan. On October 31 1944, a War Council of Provisional Government was purported to be formed. A copy of the communication announcing this was sent through Capt. Sahgal to Lt. Nag for publication.

By March 1945 many officers and men of the I.N.A. began to go over to H.M.'s forces. To prevent this being done an order was issued by Subhas Chandra Bose to the effect that every member of the Azad Hind Fauj—officer, NCO or sepoy would in future be entitled to arrest any other member of the A.H.F. no matter what his rank may be if he behaved in a cowardly manner or to shoot him if he acted in a treacherous manner.

The evidence in the case will be both oral and documentary. From time to time various documents came into the possession of the British Army in Burma. These were sent to the proper quarters and ultimately they were forwarded to the headquarters at Delhi and the prosecution is able to produce them. I need not refer in detail in my opening address to all the documents. I will, however, refer to a few of them here. These documents bear the signatures of the accused. Some of them are in the handwriting of the accused and some were issued under the instructions of the accused.

Among the documents which bear the signature of Capt. Shah Nawaz Khan or are in his writing are the following:

On August 8, 1943, Capt. Shah Nawaz wrote to the HQ No. 1 Divisional I.N.A. Command Reinforcement Group HQ the Hikari Kikan sending a copy of a scheme for the reception and management of the Indian soldiers in Burma. The year in this letter is stated to be August 8, 03. '03' stands for 2603 which is the Japanese year. There was an announcement on May 14, 1943, that the Japanese calendar would be adopted from that date, i.e., 1943, would be shown as 2603 and so on. In the scheme it is stated that it was expected that when the operations started on the Indo-Burma border some Indian soldiers would walk over to their side and some on the other hand would be forced to surrender during the fight. It was stated that due to the difficulties of language, etc., it was very difficult for the Japanese troops in the forward areas to discriminate and handle those men properly. The scheme stated that to get the best results of their propaganda they should be very careful in the treatment of those men. It was stated that the men should be divided into three categories:

- A Those who had knowledge of the movement and had come with an intention to join them.
- B Those who had no knowledge but were willing to join them, and
- C those who did not agree to join the I.N.A.

Categories A and B were to be organized, armed and equipped. Category C was to be handed over to the Japanese authorities to be treated as POW. It was stated that before the scheme could be put into effective operation the Hikari Kikan would kindly ensure that all Japanese officers and men were familiar the policy of the Nippon Government towards India, the I.N.A. and to Indian soldiers coming to their side and that Japanese officers and men were ready to help and co-operate with the I.N.A. and provide all possible facilities for the smooth running of the scheme.

On September 5, 1944, an I.N.A. order was issued. It was published on the instructions of Capt. Sahgal as Military Secretary. It sets out the decorations which would be awarded to members of the Azad Hind Fauj by the Provisional Government of Azad Hind. Among them was an award of 'Tamgha-e-Shatru Nash' which was to be awarded to those members of the A.H.F. who exhibited conspicuous gallantry and devotion to duty in killing or capturing alive any British or American Officer or other rank.

On April 2, 1945, Capt. Shah Nawaz made an information report to Major Kawabara, about the telephone lines having been cut and of there having been activity of enemy tank, armoured car and lorry-borne troops on the Legy front.

On April 10, 1945, Capt. Shah Nawaz issued an order addressed to Units 605, 747 and 801 of A.H.F. that as the regiments would have to be dispersed in very wide areas and communication with the Divisional H.Q. would not be easy, the Divisional Commander on authority from the Supreme Commander invested all regimental commanders with powers to award any punishment, includ-

ing death, to any person or persons guilty of gross indiscipline, disloyalty, desertion or any other serious crime.

The diaries of Capt. Shah Nawaz Khan for 1944 and 1945 have also come into the possession of the prosecution. The diaries are in the handwriting of Capt. Shah Nawaz. The entries in the diary for 1944 show that on January 27 1944, Capt. Shah Nawaz called on the Supreme Commander, Nippon Forces and received orders for the final move towards India. On February 11 1944, he called on the GOC. North Burma, who was very kind and promised full aid to the I.N.A.

An entry dated March 30 runs as follows

Boobi returned from Kennedy Park. His report is distressing. The Japanese are using I.N.A. Crack Regiment as labourers. I am going to Hak today to see Kimawari in this connection. I wonder what is going to be the outcome of all this one-sided co-prosperity

Another entry dated April 4 1944, states that Capt. Shah Nawaz met the Commander of the L E T Division and that the role of the division had been changed and they were going to participate in the fight for Imphal. The entry states that the Divisional Commander gave Capt. Shah Nawaz a chance to select his role in the coming operations and that his choice was an attack on Imphal.

Another entry dated July 7, 1944, is as follows

Kimawari went to GHQ to take orders. Our men did not receive any rations. Four Garhwalis have died of starvation. I and Ram Rup have approached the Hikari Kikan to do something about the rations. They seem not to take the least notice of it. I do not know what is the idea behind this deliberate starvation of my men

An entry dated July 15, 1944, says that due to starvation men were dying like flies and some were committing suicide and the Japanese were giving no help

On August 8, 1944, there is an entry as follows

Piara's return from Yuwa with Kimawari's answer. No arrangement for money or other help from him. He has suggested that our sick men at Teraun should commit suicide.

The diary for 1945 is equally significant. Under the date February 21 1945, there is an entry that Capt. Shah Nawaz was leaving for the front that night and that he left for Popa at midnight and that Netaji came to see him off and gave him all instructions. Netaji stands for Subhas Chandra Bose.

An entry dated February 22, 1945 states that he reached Kyaukpadaung at 5 a. m. and he met Lt. Dhillon and Jagir in village Inde. It states that they had managed to collect approximately 500 stragglers and that it had been a bad show. One battalion surrendered—Hanram and others bolted. The entry states Lt. Dhillon went with Capt. Shah Nawaz to Popa and that at 7 a. m. he met Riaz and Sahgal and he also met the commander of Kanji Butai. Another entry dated February 23 1945 states that he received Saku Butai's order to push the enemy across Irrawaddy. He went and reviewed defence positions and lectured to all officers. It states that he left for Meitalla at 11 p. m. and he issued operation orders to Sahgal and Lt. Dhillon

Another entry dated March 1, 1945 states that he met Netaji at Pyinmana and discussed with him future plans and then rushed on to Rangoon to take command of No. 2 Division

An entry under March 3 1945 states that it was decided that he should take over command of No. 2 Division. He heard about the desertion of Riaz, Madan, Sarwar and Dey and that it was a very sad affair

An entry dated March 14, 1945 states that Sahgal came and reported that the enemy on Pymbin side was on the run and that Pybe had been occupied by the Japanese and that Sahgal left with two companies to attack Pybe

An entry dated March 15, 1945 says that Sahgal with his forces attacked the enemy at Pybe on the night of 15-16 and that there was no enemy

An entry dated March 19 states that he went and saw Lt Dhillon at his H Q at Khabok

An entry dated March 25 states that the orders for attack on Paiby by Khanjo were changed and that now Khanjo and I.N.A main force would attack together

Another entry under March 27 states that he issued an operational order for attack on Pymbin. An entry under March 29 states that he halted at Legy and heard the news that Sahgal and other missing officers had turned up

Under the date April 2, 1945, an entry states that the day started with unpleasant shocks and that some officers had deserted. Under April 3, 1945, an entry states that Sahgal reported that the enemy, two battalions, strong and with 12 tanks, was advancing on them and that he was attacked and thrown back

Under the date April 4, 1945, there is an entry to the effect that Sahgal reported that most of the men had deserted, and that it appeared that they have had enough

An entry under April 5, 1945, states that Dhillon had arrived and he discussed plans with Dhillon and Sahgal and allotted them their respective roles, i.e., No 4 to take over defence of Kyaukpadaung and Popa. On April 7, an entry states that he issued orders to Lt Dhillon and Sahgal regarding taking over of defences

On April 18 an entry states that the British had occupied Taungwngy and that the Japanese and the I.N.A were counter-attacking

An entry dated April 19, 1945, states that the British tanks and carriers had broken into positions at Magwe and that no organized resistance could be put up

Under May 4, 1945, there is an entry as follows

Spent the day in a small hut. Rained all day. The Japanese have left us completely in the lurch. They are running themselves and are not bothering about us

Under May 5, 1945 Capt Shah Nawaz states that the Japanese have no further use of the I.N.A and all liaison officers were withdrawn at Prome and that the discipline and morale of troops had deteriorated. There was no control and officers were leaving the men

On May 13, 1945, there is an entry as follows.

Full information regarding British forces received. It appears to me that we are completely cut off. No way to escape. At 7 p.m. left the village and marched to a jungle where I gave full facts to the men. The majority decided to become POW. Yet I am not prepared to surrender and would like a little more lingering about in the jungles of Burma

Under May 14, 1945, the entry runs as follows

The POW party marched off at 10 a.m. with Major Jagu and A.B. in charge. My party with Lt Dhillon, Major Mahr Das and 80 men stayed behind to see what fate has in store for us. At 4 p.m. started from a village seven miles west of Pegu and reached village

Loga, about 16 miles west of Pegu. There are also many Japanese who are trapped in the forest. All the inhabitants are very pro-British. Our strength is only 49.

The last entry is dated May 17, 1945, and is as follows:

At about midnight 16-17 on entering the village of Sitapinzeix we were heavily fired upon by men of 2/1 Punjab Regiment from a range of 15 yards. The civilian guide was killed. I lost my bag. Spent the night in the jungle. At 6 p.m. captured by the 2/1 and taken to Pegu Divisional HQ, Corp HQ and jail.

Among the documents which bear the signature of Capt Sahgal or are in his handwriting are the following:

'On February 9, 1944, Capt Sahgal sent to all units a special order of the day by Subhas Chandra Bose as the Supreme Commander of the A.H.F. and all unit commanders were asked to hold a parade of troops under their command and to acquaint them with all available details regarding the action on the Arakan Front. This special order stated that their long-awaited march to Delhi had begun and with grim determination they should continue that march until the tri-colour National Flag that was flying over the Arakan mountains was hoisted over the Viceregal Lodge and until they had their victory parade in the ancient Red Fort of Delhi. They were asked to adopt as their slogan the words "Onwards to Delhi".'

On April 6, 1945, Capt. Sahgal made a report to No 599 Unit A.H.F. This report was made by him as commander of No 747 Unit. In the report it was stated, among other things, that Lt. Yasin Khan and other officers and men had deserted and that a great deal of alarm and despondency was observed among the officers and men owing to the desertion. The report further states that Lt. Khazin Shah, being in a very bad state of nerve, was not fit to command the battalion any more and he, therefore, sent him to keep an eye on the A' Company Commander whose movements were also suspicious and Capt. Sahgal personally took over the direction of the battle. The report also states that during the action two platoons went over to the enemy and that later Lt. Khazin Shah with the whole of his Battalion Headquarters and one platoon of C' Company deserted. Further desertions were also reported in this report and he sums up the situation by saying that their position was completely surrounded and that the morale of the 506 Unit was very low and it was most likely that some of them may possibly go over to the enemy. There is a footnote to the report that in a majority of the cases when officers were going over to the enemy they ordered the N.C.O.s and the men under their command to move with them under the pretext of either changing their dispositions or of attacking the enemy.

On March 26, 1944, Capt Sahgal addressed a communication to all formation units giving the personal numbers which were allotted to officers. The number of Shah Nawaz Khan was 22 and his I.N.A. Unit was stated to be Headquarters 1 Guerilla Regiment and his Indian Army Unit was stated to be 1/14th Punjab Regiment, the number of Lt. Dhillon was 38 and his I.N.A. Unit was stated to be Headquarters 5 Guerilla Regiment and his Indian Army Unit was stated to be 1/14th Punjab Regiment. The number of Capt Sahgal was 84 and his I.N.A. Unit was stated to be Headquarters 5C and his I.A. Unit was stated to be 2/10 Baluch Regiment.

The diary of Capt Sahgal in his own handwriting is also available and will be produced. This diary is for 1945. An entry dated February 8, 1945 states that his role was going to be the defence of Popa Hill. Under

date February 17, he states that the enemy had crossed the Irrawaddy river at Dhillon's front and that his regiment was almost finished. Under February 19, it is stated that Lt Dhillon was very despondent about the condition of the regiment. There was no discipline left and the morale was gone. Under February 22, it is stated that Shah Nawaz Khan was taking over the temporary command of the division until Col Aziz got well. Under March 1, 1945, there is an entry as follows:

I had to sentence an officer to death for refusing to go to the front.
What a pity, it is such a waste of human life.

Under March 2, 1945, there is an entry as follows:

These officers have not returned so far. I am certain they have gone over to the enemy. The treacherous swines. From now on I am going to be absolutely ruthless. I have already replaced one Battalion commander. I have issued orders that any one making a suspicious movement is to be shot immediately.

Under date March 11, 1945, there is an entry as follows:

Dhillon has gone into attack today. I hope he will do something really good. We need to wash off the disgrace that has been caused by these traitors.

Under date March 14, there is an entry as follows:

Lt Dhillon attacked Taunggen last night, but there was no enemy.

Under March 19, there is an entry as follows:

News from Dhillon. His fellows are putting up a brave show, they attacked a hill three times and eventually captured it and killed about 300 enemy. His casualties have been pretty heavy too.

Under March 20 there is an entry as follows:

Khanjo Unit has been ordered to prepare themselves to go into attack. I have to take over the defence of the whole of Popa and Kyaukpadaung area. Moved Banta Singh's battalion to cover Kyaukpadaung-Meiktella road. No definite information about the enemy in Meiktella area. I have ordered BS to send a patrol in that area to find out. Shah Nawaz has told the Japanese that we must be given a share in the offensive. I quite agree with him, but do not think will get a chance.

Under March 27 there is an entry as follows:

I am going to put a battalion astride and in the high ground in the right of Sektien-Welong road and basing one battalion north-west of Perktin. Carry out harassing attacks against enemy in Pynwyn from Tada area.

The last entry is under March 28, 1945, which states as follows:

I will put only one company to defend Welong Sektien road and leave the remainder of the battalion in the Popoayawa area until the arrival of Lt Dhillon's command when I may expect them to join me.

I may state here that Capt Sahgal surrendered on April 28, 1945.

There is an intelligence summary No 3, 501 Unit, dated March 3, 1945. It is signed by Dhillon. Under February 28, 1945, he mentions the names of some officers stating that they have been captured or have gone over to the enemy. There are other intelligence summaries and operation orders and battle reports signed by Lt Dhillon. I will refer to them in detail when they are tendered as exhibits.

It will be convenient to state here what ranks the accused bore in the I.N.A. and what units and brigades they commanded. This will also be proved not only by oral evidence but by documentary evidence.

Capt Shah Nawaz was promoted to the rank of 2nd Lt. in the I.N.A. with effect from September 1, 1942. This appears in a special order dated September 1, 1942, by Capt Mohan Singh, G.O.C. I.N.A. It is signed by Maj M. Z. Khan, G. Headquarters I.N.A. This order states the old rank and unit of Shah Nawaz Khan as Captain 1/14th Punjab Regiment.

On September 9, 1942, Capt Shah Nawaz was by another similar order made a Major with effect from September 10, 1942. By another similar order dated October 15, 1942, he was promoted to be Lt-Col with effect from October 15, 1942, and his unit was stated to be Headquarters I.N.A. This order says that it was subject to the approval of President, Council of Action Indian Independence League.

By an order dated November 30, 1942, he was appointed to be Officer Commanding Cadets Training School with effect from November 26, 1942, and the same order states that he was transferred from reinforcement group to Headquarters I.N.A. Cadets Training School.

By an order dated April 10, 1943, Shah Nawaz Khan was transferred from reinforcement group to D.M.B. office, i.e. Directorate of Military Bureau.

By an order dated April 17, 1945, which is signed by Capt. Sahgal as Military Secretary, Capt. Shah Nawaz Khan was appointed Chief of General Staff. In February 1945, he was promoted Colonel in the I.N.A.

Capt. Sahgal was made 2nd Lieut. by the aforesaid special order dated September 1, 1942, and his old rank and unit are stated to be Captain 2/10th Baluch Regiment.

By the aforesaid order of September 9, 1942, he was promoted to be a Capt. with effect from September 10, 1942. By the aforesaid order of October 15, 1942, he was promoted to be a Major with effect from October 10, 1942, and his unit is stated to be headquarters 1 Hind Field Force Group.

By the aforesaid order of April 10, 1943, Capt. Sahgal was transferred from headquarters of Hind Field Force Group to D.M.B.'s office with effect from February 26, 1943. This order is signed by Capt. Sahgal himself as Military Secretary.

On April 17, 1943, Sahgal was posted as Military Secretary.

Lt Dhillon was appointed 2nd Lieut. in the I.N.A. by the aforesaid order of September 1, 1942, and his old rank and unit are stated to be Capt. 1/14 Punjab Regiment. He was promoted to be a Captain by the aforesaid order dated September 9, 1942, with effect from September 10, 1942. By the aforesaid order of October 10, 1942, he was promoted to be a Major and his unit is stated to be Reinforcement.

On April 17, 1945, he was posted to the O Branch as Deputy M.G. The evidence will prove that after the arrival of Subhas Chandra Bose in Singapore in July 1945, No. 1 Guerrilla Regiment was formed. Shah Nawaz Khan was appointed its commander. He left with his regiment for Burma in about October 1943. I will deal separately with the activities of all the accused after the beginning of 1945.

Capt Sahgal was on the formation of the I.N.A. in September 1942, Adjutant 1 Hind Field Force Group. He became Military Secretary in April 1943. He arrived from Singapore in Rangoon about February 1944 and remained there for about a year before taking active command.

Lt. Dhillon was at first officer in charge of Supplies and Transport. In October-November 1943 he was second-in-charge to Capt. S M Hussain who was commanding Hind Field Force Group (part of Second Division). He arrived in Burma in or about September 1944. Soon after his arrival in Rangoon he was appointed Officer Commanding 4th Guerilla Regiment (Nehru Brigade) and he moved to Mandalay to take up his duties.

In February 1944, the main HQ of the I.N.A. reached Rangoon. The rear HQ were at Singapore. By that time the following units of the I.N.A. were in Burma, namely, the four Guerilla Regiments, Nos. 1 and 2 Bahadur Groups, Reinforcement Group, Intelligence Group and ancillary units. In April 1944, the 1st, 2nd and 3rd Guerilla Regiments were at the front preparatory to the Manipur and Arakan offensives. The 4th Guerilla Regiment was then at Mandalay.

In the beginning of 1945, Capt. Shah Nawaz was the Divisional Commander of No 2 INA Division. Capt Sahgal was Commander of No 2 Infantry Regiment (originally known as No 5 Guerilla Regiment) which was part of the 2nd Division. Lt. Dhillon was the Commander of the 4th Guerilla Regiment which was originally called Nehru Brigade.

The last phase of the waging of the war so far as the accused are concerned was in the vicinity of Kyaukapadaung and Papa area. All the accused were then in that area and were directing operations against the armies of His Majesty and were themselves fighting against those armies. There will be evidence to show that on March 4, 1945, a patrol of the 5th Guerilla Regiment which was then known as the 2nd Infantry regiment had an encounter with a British Patrol and captured two jeeps and a wireless set. This will be deposed to by Gunner Bhim Singh of the I.N.A. who was one of the patrols. In this encounter two British soldiers were killed. The British patrol was of the 2nd Battalion South Lancashire Regiment. Capt Fenshaw, who led this patrol, will depose to the encounter. There will be evidence that one of the jeeps captured was used by Capt Sahgal. We find no reference to this in Capt Sahgal's diary in which under March 4 there is an entry to the effect that the news came through that his patrol had captured three cars and put to flight an American patrol who left three dead behind. Under date March 5 there is an entry as follows:

Managed to bring back two of the jeeps and the captured arms and ammunition and one wireless set.

On March 16, 1945, there was an encounter between a company of the 4th Guerilla Regiment which was under the command of Lt Dhillon. The Company consisted of between 90 to 100 men. This was in the vicinity of Kyaukapadaung. The encounter was with the 4/5 the Gurkha Rifles under the command of Lt Col MacConachie. Six of the Company of the 4th Guerilla Regiment were killed and 35 captured. On the British side four Gurkhas were killed and five wounded. This fight is mentioned in a 'battle report' made by Lt Dhillon on March 18, 1945.

This shortly will be the case of the prosecution as regards the first charge, namely, of waging war against H.M. the King.

I will now deal with the charges of murder and abetment of murder. Section 302 IPC provides the punishment for murder. According to Section 299 IPC whoever causes death by doing an act with the intention of causing death commits the offence of culpable homicide. Section 300 provides that except in the cases thereafter excepted culpable homicide is murder if the act by which the death is caused is done with the intention of causing death. The exceptions mentioned in that section have no relevance to the present case and I need not refer to them.

Section 109 IPC provides for the punishment of abetment if the act abetted is committed in consequence.

Section 107 IPC says that a person abets the doing of a thing who among other things instigates any person to do that thing or intentionally aids by any act or illegal omission the doing of that thing.

I will deal with charges 2 to 9 together. Lt. Dhillon is charged with offences of the murder of four sepoy and Capt Sahgal is charged with the abetment of those murders. The four men who were killed were sepoy in the I.N.A. Before they joined the I.N.A. they were sepoy in the Indian Army. The case for the prosecution is that Capt. Sahgal gave the order for the four sepoy to be shot and Lt. Dhillon got them shot on March 6 1945. There is documentary evidence to prove this. There is a document styled 'Crime Report' bearing date March 6 1945 signed by Lt. Dhillon. In this document it is stated that the four sepoy while on active service deserted from the front line on February 28, 1945 until apprehended by a unit patrol sent for the purpose on March 2 1945 and that they attempted to communicate with the enemy on February 28 1945. Under the column punishment awarded there is an entry in the handwriting of Lt. Dhillon and signed by him stating as follows: 'Remanded for Divisional Commander's trial'. In the same column there is an entry in the handwriting of Capt. Sahgal as follows: 'Sentenced to death under the authority of Supreme Commander A.H.F. letter dated February 21, 1945 to No 2 Infantry Regiment'. Under the column By whom awarded there is the signature of Capt. Sahgal with the date April 6 1945. The document itself is signed by Lt. Dhillon.

There is another document called special order of the day dated March 19 1945 in which under the heading administration, desertion, capital punishment after setting out what I have already read out from the 'Crime Report' it is stated that Capt. Sahgal passed the sentence of death on May 6 1945 and that the sentence of death was carried out at 7 p.m. on April 5 1945.

There will be oral evidence to show that on March 6 1945 the four men with their hands tied behind their backs were taken to a trench and made to sit down there. Lt. Dhillon then made a speech in which he said that the four men in the trench had attempted to escape to the British but they had been captured by a patrol and brought back. For this they had been awarded the death sentence and would now be shot. He then called for volunteers for the firing squad. Three men volunteered: Lt. Hidayatullah, S/P Kaluram and Naik Sher Singh. Hidayatullah and Kaluram had rifles and Sher Singh had a pistol. Lt. Dhillon then called the first man out of the trench. He made a short speech in which he said that the man had been captured whilst trying to contact the British authorities and for this he was going to be shot. The man then said he had a request to make. Lt. Dhillon replied that no request would be listened to. He then gave the order to fire to Hidayatullah who fired one round at the prisoner who fell to the ground. The other men were then called from the trench one at a time and were shot. Hidayatullah shot the second man as well and Kaluram shot the third and fourth men. The four men were then lying on the ground but were not yet dead. Lt. Dhillon ordered Sher Singh to fire his pistol into each of them. Sher Singh did this. Lt. Dhillon then made a speech saying that in future if any man behaved as these four dead men had behaved, he would get the same punishment. The four bodies were then buried in the trench.

The 10th charge is against Capt. Shah Nawaz Khan for abetment of the murder by one Khazin Shah and one Aya Singh of Gunner Mohammad.

Hussain of H K S R A There is no document available in respect of this order to shoot Mohammad Hussain But there will be oral evidence to show that Mohammad Hussain, Jagiri Ram and Allah Ditta were taken to Capt Shah Nawaz Khan who read out a 'Crime Report' in respect of each of the three persons to the effect that they had attempted to escape to the British So far as Mohammed Hussain was concerned he replied to the charge that it was true and that he had done so because he had a lot of trouble Capt Shah Nawaz then said to him "You have been making a propaganda here and you have been trying to persuade the men to escape to the British"

Those two men were going to escape to the British through your persuasion You are disloyal to your country and you were going to join our enemies, as a punishment I sentence you to death, and you will be shot Mohammed Hussain pleaded for pardon But Capt Shah Nawaz Khan said "I will listen to no excuses and there will be no pardon You are our enemy and you will be shot" On the same day Khazin Shah had Mohammed Hussain taken to the bank of a 'nullah' where a grave was being dug for him Under Khazin Shah's order Mohammed Hussain was tied to a tree and his eyes were bandaged Khazin Shah then called for two men with rifles from the fatigue party who were digging the grave to form the firing squad Two men came forward, a Sikh and a Madrassi and stood about 8 to 10 yards in front of Mohammed Hussain Kazin Shah then told Jagiri Ram whom he had ordered to be present there that he had attempted to escape with Mohammed Hussain and that he would be one of the firing party that was going to shoot Mohd Hussain When Jagiri Ram said that he would not do so, Khazin Shah drew his pistol and pointing it at Jagiri Ram said that if he did not carry out his order he would shoot him there along with Mohammed Hussain Khazin Shah then ordered Aya Singh to give the fire order Aya Singh hesitated for a few seconds, Khazin Shah again ordered him to give the firing order and Aya Singh did so, whereupon the three men each fired one round and Mohammed Hussain fell down dead

It is submitted that the aforesaid acts of the accused amounted to murder and abetment of murder. If the accused seek to rely upon any general or special exception or upon any proviso in the Indian Penal Code, the burden of proving the existence of circumstances bringing the case within such exception or proviso is under Section 105 of the Indian Evidence Act upon the accused and the Court shall presume the absence of such circumstances The prosecution will submit that any plea that they were bound or justified by law in doing what they did cannot avail them Joining with rebels in an act of rebellion or with enemies in acts of hostility makes a man a traitor An act of treason cannot give any sort of rights nor can it exempt a person from criminal responsibility for the subsequent acts Even if an act is done under a command where the command is traitorous, obedience to that command is also traitorous

It is submitted that the accused cannot in law seek to justify that they did as having been done under the authority of the Indian National Army Act No authority purporting to be given under that Act can be recognised by this Court or indeed by any court of this country. The assumption of any such authority was illegal from the beginning Any tribunal or authority purporting to be established under that Act would be in repudiation of the allegiance which is inherent in a court of the country. Those who instituted or took part in the proceedings were themselves liable to be punished for offences against the State All orders under the INA,

Act or by any tribunal or authority purporting to be established by it are without sanction. They cannot protect the persons who made such orders or who acted upon them.

First Witness for the Prosecution Lieut. Col. P. Walsh, being duly sworn in and examined by Counsel for the Prosecution states:

On October 27 1945, I served upon each of the accused officers a notice to produce the original parchment commission given to each of them respectively on the occasion of their being granted a commission in His Majesty's Indian Land Forces. I produce the record of service of Captain Shah Nawaz Khan.

Sir N. P. Engineer: It shows that Capt. Shah Nawaz Khan's date of birth as January 24 1914, place of birth as Rawalpindi and schools as the Royal Indian Military College, Dehra Dun.

He was commissioned as an Indian Lieutenant, Special List, and posted to the 1st Battalion, the Royal Norfolk Regiment, for 12 months attachment. Later, he was posted to the 1/14th Punjab Regiment, Jhelum. Later he joined the 1/14th Punjab Regiment and ceased to be attached to the 1st Battalion, the Royal Norfolk Regiment. In August 1939, he joined the 10/14th Punjab Regiment for two years as Platoon Commander. On October 21 1940, he was transferred to the 1/14th Punjab Regiment. On January 13, 1942 he proceeded to join the 1/14th Punjab Regiment overseas to be Captain. On February 15, 1942, he was made a prisoner of war.

On July 11 1945 he was attached to the Combined Services, detailed Interrogation Centre, Delhi.

Lt. Col. P. Walsh produced the record of service of Captain P. K. Sahgal. The relevant entries are:

Date of birth—January 25 1917. Place of birth—Hoshiarpur, Punjab. Date of first Commission—12 1939 and School—Central Model School, Lahore. Punjab University Technical College and I.M.A. Dehra Dun.

On February 24, 1940 he was posted to the 5/10th Baluch Regiment. On October 27 1940 he embarked for Singapore and he disembarked there on November 11 1940. Reported as prisoner of war on February 14, 1942 and on May 20 1945 attached to the Combined Services, Detailed Interrogation Centre, Delhi.

Lt. Col. P. Walsh then produced the record of Lieut. G. S. Dhillon. The relevant entries are:—

Date of birth April 4, 1945. Place of birth—Algon, Lahore District, and Places of Education—Punjab University Technical College and Krishna College, Nowgong, and the I.M.A.

He was attached to the 1/14th Punjab Regiment on April 30 1940. He was reported prisoner of war on February 15, 1942. On July 5, 1945, he was attached to the Combined Services, Detailed Interrogation Centre, Delhi.

Sir N. P. Engineer (addressing Lt. Col. Walsh): Will you now produce the Gazette in which they are commissioned?

At this Lt. Col. P. Walsh produced two copies each of the entries relating to Captain Shah Nawaz Khan, Capt. P. K. Sahgal and Lieut. G. S. Dhillon. The copies were compared with the original by the court and found correct.

Defence Counsel did not cross-examine witness.

Second Witness for the Prosecution—I C R O 191 Lieut D C Nag, A.I.R O. being duly sworn in on examination by the Prosecution Counsel, stated.

I am 30 years old and I am a native of Bengal, graduated in 1915 and in August 1920 I was admitted to the Bengal Junior Civil Service. In 1934-35, I was appointed First Class Magistrate. I was granted a commission in the A. I. R O. In February 1941, I was called upon to report for active service. At that time I was a magistrate at the District headquarters of Rajshahi in Bengal.

On March 1, 1941 I reported for service at Aurangabad. After that I went with my unit (3 M.R C) overseas, arriving in Singapore on March 27, 1941. At the outbreak of war in Malaya on December 8, 1941, I was with my unit in Penang. From Penang, I withdrew my unit and eventually came down to Singapore.

Q On February 15, 1942, were you in Singapore?

A On February 15, I was with my unit at a place called Raffles Place in Singapore, but in the afternoon of that day I was wounded in an air raid and was taken to a hospital. It was a Civilian Hospital to which we were taken first and within four or five hours we were taken to another military hospital. I think it was 27, I G H. It was not anything like a camp. It was situated by the seaside near Northbridge Road in a place which was originally Raffles Institute.

Q Did you go to any camp after that?

A Yes, we were taken to Neesoon after four or five days where we were admitted into another hospital.

Q Now, when in the camp, did you learn of any new movement for the formation of any army?

A After I was discharged from the hospital I came to know that there was a movement for the formation of an Indian National Army. At this time I was in the Neesoon Camp.

Q Can you tell the court why that army was formed?

A It was formed to fight for the liberation of India from the British rule.

Q Do you know if any lectures were given in the camp by either the prisoners of war or by the Japanese or by both?

A Yes, some Indian Army officers and Japanese officers came to deliver lectures in the camp. Their object was to organise this movement and to ask the prisoners of war to join the movement. I attended only one lecture. I think it was in August 1942. That lecture was delivered by Lt Col Chatterji.

Q Is there any reason why before August 1942 you did not attend any lecture?

A Firstly, because I was very ill, and I had lost my glasses in the air raid and could not see. I was also partially deaf as a result of that bomb blast in which I was wounded. So, I did not stir out of my quarters. But by August I was a little better and I attended that lecture. Secondly, because I was not at all interested in that movement.

I met Shah Nawaz Khan first in Neesoon. It was about March or April 1942 when he was commanding that camp, in connection with obtaining permission to go up to the camp to have my eyes examined and get my glasses. That was the first time I met him.

Q Do you recognize Capt Shah Nawaz Khan?

A. Yes, he (pointing) is Capt. Shah Nawaz Khan. He was Camp Commander

Q. Now, will you tell the court the circumstances under which 'when' and how you came to join the Indian National Army? Also, where it happened and how it happened?

A. It happened like this. One day towards the end of August 1942 there was a lecture in that camp by Capt. Mohan Singh of the 1/14th Punjab Regiment which I did not attend but after the lecture had finished I was passing by the camp office and I found he (Capt. Mohan Singh) was returning after the lecture. He saw me from a distance. He was accompanied by some officers of the Indian Army, who were also prisoners of war at that time, and he asked the Camp Commander, who was Lt. Bishan Singh at that time, about me. I could overhear him, because I was only about five or six yards away from him.

Q. Among the officers who were with him was any of the accused there?

A. I remember Capt. Shah Nawaz Khan was with him, but I do not remember the others. Then Lt. Bishan Singh called me and introduced me to Capt. Mohan Singh as Dr. Nag. I told him, I am not a doctor. He asked me 'What are you then?' I told him I was a magistrate in civil life. He said 'That is exactly the sort of man I am looking for.' He asked Lt. Bishan Singh to send me that very day to Bidadari Camp.

Q. Did you go there?

A. Yes. I went there and before I left Capt. Mohan Singh asked me to see him when I arrived in Bidadari Camp. So I tried to see him but I could not. I tried to see him the next day and the day after also but I failed. I was told that he was too busy and could not see me. In the meantime, within about three or four days of my arrival in Bidadari Camp I was told by Capt. Habibur Rehman of the 1/14th Punjab Regiment

Col. Kern (Judge Advocate)—It is rather like hearsay. What were you told?

A. I was appointed to be in charge of the legal department of the Indian National Army.

Q. (By Prosecution Counsel) Were you asked to do anything particularly in connection with that?

A. Yes. My first job was to draft the Indian National Army Act. I was given an assistant, Captain Mathur of the 5/2nd Punjab Regiment and with him, started drafting the I.N.A. Act.

At this stage, the prosecution counsel produced a document signed by Capt. M. Z. Kiani to which witness testified.

(It is headed Special Order No. 1 dated Sept. 1, 1942. I.N.A. Special Order No. 1 was read and marked AA.)

Q. Who was Capt. M. Z. Kiani?

A. He was at that time Chief of the General Staff of the I.N.A. Headquarters.

Another document headed Special Order No. 4 dated September 9, 1942, by General Mohan Singh, General Officer Commanding I.N.A., was produced and testified by witness. The document runs as follows:

(I N A *Special Order No 4*, was read and marked B B)

A third document headed '*Special Order No 12*, dated October 15, 1942, by General Mohan Singh, G O C Indian National Army' was produced and attested to by witness

Special Order No, 12 was read and marked C C

Another document headed, "organisation and training instructions No 1" was filed. It was marked D D

Su N P Engineer Do you know what was the strength of the I N A in September 1942?

Lt Nag I do not know exactly. It was about 10,000 in September 1942

Mr Desai I would like to know whether he has any precise information or is it just a guess?

Judge Advocate What is your information of that? How do you know?

Witness I do not know it officially, because I had nothing to do with the strength. But it was more or less common knowledge that in the beginning of September 1942 the strength was about 10,000

Judge Advocate Did you get that from your own knowledge or from what people told you?

Witness From my own knowledge

Mr Desai. All I want is that he should not mix up what he knows from what he hears. Otherwise he can say what he likes for the present

Judge Advocate You say that from your own knowledge it was about 10,000

Witness Yes

Prosecution Counsel Did you know before that whether the I N A was armed and where the arms were obtained from?

Lt Nag It was armed with rifles, bayonets, L M G s, pistols for officers and a few armoured cars and carriers, and about half the strength of the I N A was armed

Judge Advocate About half were armed, you say?

A Yes

Q Do you know that of your own knowledge?

A That is what I heard

Judge Advocate That is hearsay. You must speak only of what you know and not of what people told you of this matter. You are a magistrate and you should know that

A Just as I said, I do not know officially

Col Kerin You must speak quite plainly

Lt Nag This was, as I said, more or less common knowledge

President It must be your own personal knowledge

Col Kerin Will you confine your remarks to your own personal knowledge and not what someone else has told you?

Lt Nag Yes, Sir

Prosecution Counsel Do you know from where these arms were obtained?

A They were armed ..

Mr Desai I object to that. I want to know whether the witness has any personal knowledge

Col. Kern. Is this of your personal knowledge ?

A. Yes, because I saw the arms myself and they were British arms and not Japanese arms

Mr Desai. My object is to get down things that he knows

Q. What uniforms were worn by the I.N.A. ?

A. The Indian Army uniform was worn with the I.N.A. badges of rank

Q. You produced some of these badges which were worn.

(Badges were given to witness to identify)

Witness. This is an arm band which used to be worn by all ranks of the I.N.A. from September to December 1942

(Arm band with crossed flag and Star marked I.N.A. was laid before the Court)

The other badges which he identified were collar badges (georgette badges in green, white and orange) used by all ranks from September to December 1942, a cap badge (marked I.N.A. in bronze) worn in the second I.N.A. that is from 1943 onwards, the badge worn by a 2nd Lieut., (two epaulettes with brass numerals of the rank of 2nd Lieutenant, I.N.A.) a pair of shoulder titles of the I.N.A. rank of Colonel (three golden stripes and a star) and a pair of epaulettes of I.N.A. rank of the Major General (cross swords and a star and bar) used in 1945 because before that there was no Major-General in the I.N.A.

Advocate General. Do you remember that during the time Capt. Mohan Singh was in command of the I.N.A. there was a Council of Action?

A. Yes

Q. What did it consist of?

A. It consisted of a President, who was Mr Rash Behari Bose, and six members three civilian and three military. The civilian members were Mr Menon, Mr Raghavan and Mr Goho and the military members were Capt. Mohan Singh, Lt. Col. Gillani and Lt. Col. Bhonsle

The advance part of the I.N.A. was sent to Burma in 1942. It consisted of detachments from all the units of the I.N.A. that is to say the Guerrilla Regiment the Reinforcement Group the Intelligence Group the S.S. Group except the Hindustan Field Force Group and Auxiliary Units

Q. What happened in December 1942?

A. Capt. Mohan Singh was put under arrest by the Japanese as a result of some differences. Soon after his arrest, I think within a week or so a Committee of Administration was set up consisting of Lt.-Col. Bhonsle as Chairman, Capt. M. Z. Kiani, Lt.-Col. Loganathan and Major Prakash Chand as members

The Committee issued its first order saying that it was meant for the administration of and maintenance of discipline of the ranks occupied by the ex I.N.A. personnel. Soon afterwards a campaign of lectures was started by the Committee, and senior I.N.A. Officers lectured to all the officers and men in various camps. The object of these lectures was to ascertain the views of the ex I.N.A. personnel.

Judge Advocate. How do you know this ?

A. Because the first order said that the object was to maintain discipline and administer camps, and then the lectures were organised by the Committee to ascertain the view of the ex I.N.A. personnel, whether they wanted to continue

in the I N A. or not. I attended two of these lectures myself one at Bidadari I N A Headquarters which was delivered by Lt-Col Chatterji and later another lecture in Bidadari BI Camp by Mr Rash Behari Bose. These lectures were delivered in January 1943 so far as I can remember. The purport of these lectures was to ask us to continue in the I N A, because firstly, the object of the I N A was very laudable, namely, the attainment of India's Independence, the arrest of Capt Mohan Singh did not matter in the least and, secondly, our position would be very difficult, because the Japanese were not prepared to take us back as prisoners of war. The officers were asked to give their opinion on the subject. The vast majority of the officers were of opinion that they should not continue in the I N A. They even went to the length of criticising these lectures openly during the lectures. They criticised also Mr Rash Behari Bose very bitterly in his presence. Both these lectures which I heard met with hostile demonstration by the audience.

It was in January 1943 or the beginning of February 1943 that the officers were asked to answer a set of questions which were put before them. The questions were mainly meant for ascertaining our views on whether we wanted to continue in the I. N. A. or not. I answered one of these questions.

Q What did you state in your answer?

A I said I was not prepared to continue.

Q What happened after that?

A Soon after that, within a week or so, I was called for an interview along with 12 or 13 other officers before Rash Behari Bose. They were called before him individually, one by one, and when my turn came I found that my answer paper was before him. He asked me whether I still stuck to my original decision or whether I was prepared to change it. I told him that I was not prepared to change it and I stuck to my original decision of not continuing in the I N A. On my giving this answer, he directed me to a room. I found that gradually most of the officers were assembling in that room. We all assembled there from where we were taken by a Japanese officer, Major Ogawa, to the separation camp in Orchard Grove in Singapore. From there we were taken to another separation camp in Jhoi Baru. After some time in that camp I fell very ill and I was removed to Bidadari hospital for treatment. While I was a patient in that hospital after about a month of my stay there, I came to know that the patients who were still not willing to remain in the I N A were about to be sent to the Silhotri camp, where there was no provision for any treatment. As I could not afford to forego my treatment, I agreed to join the I N A.

I was discharged towards the end of April 1943 and I resumed my duties in the beginning of May 1943 as J A D of the I N A which was my original appointment. When I joined there, I found that the organisation was different. It was the Directorate of Military Bureau.

It consisted of the Director, who was Lt-Col Bhonsle, an Administrator, who was Lt-Col Loganadan, the Chief of General Staff, who was Captain Shah Nawaz Khan, the Military Secretary, Capt Sahgal, and then there was the D P M Capt Abdul Rashid of the 1/14th Punjab Regiment. There was the Army Commander, Capt M Z Kiani, and other staff officers.

Q Can you identify Capt Sahgal?

A Yes, he is sitting there.

Q Are you in a position to identify Capt Dhillon?

A Yes, he is sitting there.

Q What were the operations of the unit of the I N A this time?

A They were the same as before, except that one of the names was changed. For instance, the Hindustan Field Force Group came to be known as No 1 Infantry Regiment and 55 Group was known as Bahadur Group. These units were all engaged in taking training.

Q And did the officers and men put on badges?

A Yes they were all putting I N A badges.

Witness then identified several extracts from the Military Bureau Gazette dated April 17, 1943 signed by Major P K. Sahgal Military Secretary.

Original Military Bureau Gazette dated April 17, 1943 was read and marked F F

Q Do you know that Subhas Chandra Bose came to Singapore, and if so, when?

A He came to Singapore in July 1943

Q Do you know what he did after coming there?

A After coming there he took over the complete control of the Indian National Army and also the Indian Independence League. He became the Supreme Commander of the Indian National Army and President of the Indian Independence League.

Witness identified a document headed 'Special Order of the Day' by Subhas Chandra Bose dated August 25. It reads as follows —

In the interests of the Indian Independence movement and of the Azad Hind Fauj, I have taken over the direct command of our Army from this day

"This is for me a matter of joy and pride because for an Indian there can be no greater honour than to be the Commander of India's Army of Liberation. But I am conscious of the magnitude of the task that I have undertaken and I feel weighed down with a sense of responsibility. I pray that God may give me the necessary strength to fulfil my duty to Indians under all circumstances, however difficult or trying they may be.

"I regard myself as the servant of 38 crores of my countrymen who profess different religious faiths. I am determined to discharge my duties in such a manner that the interests of these 38 crores may be safe in my hands and every single Indian will have reason to put complete trust in me. It is only on the basis of undiluted nationalism and of perfect justice and impartiality that India's Army of Liberation can be built up

In the coming struggle for the emancipation of our motherland, for the establishment of a Government of free India, based on the goodwill of 38 crores of Indians and for creation of a permanent army which will guarantee India's Independence for all times, the Azad Hind Fauj has a vital role to play. To fulfil that role, we must weld ourselves into an army that will have only one goal, namely the freedom of Indians and only one will, namely to do or die in the cause of India's freedom. When we stand, the Azad Hind Fauj has to be like a wall of granite when we march the Azad Hind Fauj has to be like a steam-roller

Our task is not an easy one the war will be long and hard but I have complete faith in the justice and in the invincibility of our cause. Thirty-eight crores of human beings who form about one-fifth of the human race have a right to be free and they are now prepared to pay the price of freedom. There is

consequently no power on earth that can deprive us of our birthright of liberty any longer.

"Comrades, Officers and men ! With your unstinted support and unflinching loyalty Azad Hind Fauj will become the instrument of India's liberation. Ultimate victory will certainly be ours. I assure you. Our work has already begun.

"With the slogan, 'Onwards to Delhi' on our lips, let us continue to labour and to fight till our National Flag flies over the Viceroy's House in New Delhi, and the Azad Hind Fauj holds its victory parade inside the ancient Red Fort of the Indian metropolis."

The Court then adjourned to meet on the next day (November 6).

On re-assembling on November 6 the examination of Lt. Nag was continued

Prosecution Counsel : I showed you a copy of the Indian National Army Act. You say this is a copy of the Act which you drafted.

Witness : Yes, Sir

(A copy of the Indian National Army Act was filed). It refers to No. 2 M.T. Coy. whose role was the transportation of the I.N.A. personnel, ration, supplies, ordinance, and other stores for the I.N.A. It is marked J 1)

Q. Who gave you instructions for the drafting of this Act?

A. Capt. Habibur Rahman, who was in charge of Administration in the I.N.A. Headquarters. He asked me to draft this Act, later, Captain Dil Sukh Mann of the 149th Hyderabad Regiment

Q. Look at Section 55(c) of this Act. Did you follow any model in drafting this Act?

A. The Indian Army Act was used as a guide

Q. Look at Section 55. Was that inserted at the instructions of anybody?

A. Yes

Defence Counsel : I object to that

Judge Advocate : On what ground?

Mr. Desai : to the witness saying that somebody else told him. That should not be treated as evidence. We have no means of verifying whether he did receive any instructions

Prosecution Counsel : I submit that this is not hearsay in any sense of the term. What the witness is deposing is what he himself has been told by somebody. I am not tendering that statement as being true in any sense. The witness had been deposing what he had been instructed to do and under what circumstances this clause was inserted

Judge Advocate : I hope the Defence has no objection to the witness being asked "on whose instructions"?

Defence Counsel : I have no objection there. I submit that it does not arise now. But I had better protect myself now. It would have no value unless this man's word is corroborated by someone else

Prosecution Counsel : I will not press this question further beyond asking him "under whose instructions". But it may be relevant and important later to argue the question more fully, because circumstances may arise where certain questions may have to be asked

Judge Advocate I think that is quite fair

Prosecution Counsel On whose instructions was it done?

Witness On the instructions of Capt. Habib-ur Rahman and Capt. Dil Sukh Mann

Q Was any amendment made later in this section, and if so when? Let me read Section 55

"The Court should by its sentence order with or without rigorous imprisonment whipping according to the following scale provided the accused is certified to be in a fit condition

a six stripes a week or less

b total stripes not to exceed 24

c at intervals as ordered by the court.

Later on was this amended?

A In June 1943 when the Directorate of Military Bureau was functioning I was instructed to amend this section and give summary powers to the Area Commander

Witness identified the Draft Amendment to the Indian National Army A This is marked K. K.

About September or October 1944 a further amendment was made in this section after the question was discussed at a conference, which was called Captain Habib-ur-Rahman, as Assistant Chief of Staff at Headquarters, I.N.A. Rangoon. The object of the amendment was to increase the scale of whipping up to a maximum of 50 from 24, at the rate of not more than six strokes per week and summary powers for inflicting this punishment was given to Division Regimental and Battalion Commanders in the field

Witness continued to say that after Subhas Chandra Bose's arrival in Singapore, a Guerilla Regiment, known as No 1 Guerilla Regiment, also known as Subhas or Bose Regiment, came into existence in Singapore in 1943. The other Regiments, namely Gandhi, Azad and Nehru Regiments were numbered Nos. 2, 3, and 4 respectively. These Regiments were incorporated in No 1 Division, which was moved to Burma by the end of 1943—about October-November 1943

Subsequently Nos. 2 and 3 Divisions were formed

Q Are you in a position to tell the court what the strength of the Indian National Army finally was?

A The final strength of the Indian National Army was about 40,000

No 2 Division consisted of about half and half prisoners of war and civilian recruits who were mainly recruited from the civilians in Malaya. No. 3 Division was almost entirely composed of civilians recruited in Malaya

Q Now were you present at a meeting held in the Cafe building in Singapore in October 1943?

A Yes, Sir This meeting was held on October 21 1943 after the arrival of Subhas Chandra Bose in Singapore. It was held in the Cafe building and over 5,000 people attended this meeting. They consisted of mainly Indian and Indian delegates from all the countries to the east of India. Indian National Army officers and men, some Japanese officers and Indian civilians. I was present at the meeting. At this meeting Subhas Bose declared the establishment of the provisional government of free India and announced the names of the members of the Government. He also appealed to the civilians to lend their support to the Indian National Army which was to fight on the Indo-Burma border in the near future. Capt. Shah Nawaz Khan was one of the members

In February 1944, the Headquarters of the I N A was in Rangoon with a rear headquarters left in Singapore

In reply to Prosecuting Counsel, Lt Nag said I was in Singapore in March 1944 and I arrived in Rangoon on the last day of March, that is, on March 31, 1944. By that time the following units of the I N A were in Burma Numbers 1, 2, 3 and 4 Guerilla Regiments, the Reinforcement Group, the Bahadur Group Nos 1 and 2 (there were two Bahadur groups), the Intelligence Group and some Ancillary Units

Within three or four days of my arrival in Rangoon I was asked by the Military Secretary, Capt Sahgal, to proceed to Maymyo. I arrived there, I think, about the April 10. At this time Nos 1, 2 and 3 of the Guerilla Regiments were on the Indo-Burma front, spread over Manipur and Aikan sectors. No 4 Regiment was in Mandalay

When I arrived in Maymyo I was asked by Lt-Col Chatterji, who was the then Governor-designate of the areas to be occupied by the I N A, to go through some schemes, regulations and laws which he had drafted for the administration of those areas. I went through them. It took me about five weeks. After that I went back to Rangoon and I resumed my duties in the headquarters as J A G. When I was at Maymyo, Subhas Bose was there and he left on the same day as I did, namely, the third week of May 1944. In August 1944, I was asked by Capt Sahgal to take over temporarily the duties of D A G from him in addition to my own duties

My duties were to maintain the strength return, to look after the general administration and discipline of the I N A, issuing general orders and postings and transfers of the other ranks

Asked what happened to the three Guerilla Regiments by July 1944, he said By July 1944, the Guerilla Regiments were withdrawing from the Mandalay front after sustaining reverses

Prosecuting Counsel to Judge Advocate I am showing to the witness a Special Order of the Day signed by Subhas Chandra Bose. Shown the document, witness identified the signature of Subhas Chandra Bose

(Special Order of the Day dated August 14, 1944, is read and marked LL, signed by the President and attached to the proceedings)

Advocate-General I do not know if you want me to read the whole of the document or the relevant parts of it. There are a number of documents to be put in. My only anxiety is to save time

Mr Desai Some of these documents have to be read.

Advocate General If you want any particular portion to be read, I will gladly do it

Mr Desai My only submission is that if all the three minds work together, it would be better

Advocate-General If you have any portion which is considered to be material and which I have not read, I will read it

Judge-Advocate Our primary object is, of course, to do justice and our secondary object is to save time

(The document was then read by the Advocate-General)

Advocate-General Look at this document. This is the document which is headed "Azad Hind Fauj Lt-Col Habib-ur-Rahman, Assistant Chief of Staff, No 13 unit". Is that signed by anybody?

Witness This is signed by me as D A C

(Azad Hind Fauj Orders Nos 331 & 332 dated September 1944 are read and marked M31.)

Pros. Counsel I will read the first three lines (Reads)

Defence Counsel May I know if it is purported to be a signature on the whole document?

Judge Advocate I think the court are entitled to take it from military knowledge that orders of this kind are usually signed at the end. Only the last page is signed.

Defence Counsel I am prepared to take it from you.

Pros. Counsel Can you tell the court in what circumstances this order was published? This is dated October 30 1944 and it is headed Azad Hind Fauj Orders by Lt Col Aziz Ahmad Khan No 11 unit. I am referring to 444 and 445.

Witness No 445 was published under the instructions of Capt P K. Sahgal who was Military Secretary. The copy which he handed over to me was a copy of this order published already in the Gazette of the Provisional Government of Azad Hind already. And subsequently this order was published in this order relating to War Council.

Pros. Counsel I am referring to the order No 445 which is headed War Council.

(Azad Hind Fauj Order dated October 30 1944, No. 445 is read extracts compared certified correct marked NN signed by the President and attached to the proceedings.)

Pros. Counsel Can you tell the court what the military situation of the I.N.A. was in April 1945?

Witness In April 1945 the military situation in Rangoon was pretty desperate because we learnt that the British forces were advancing towards Rangoon and the Japanese were evacuating Rangoon.

We were cut off from No 2 Division in Rangoon since the middle of March, 1945, and the last information that was received was that No 2 Division was in action in Popa Hill and Chakkadang areas.

No 1 Division was entrenched in Pynmana area right down to Zeyawadi on the Mandalay Rangoon road. About 6000 I.N.A. men were in Rangoon at this time.

Pros. Counsel. Do you know whether they were all armed.

Witness No there were sufficient arms only for about half that number.

Pros. Counsel. Was Subhas Chandra Bose in Rangoon in April?

Witness Yes he left Rangoon on the 20th of April 1945. The British troops entered Rangoon on the 3rd of May 1945.

Witness produced a Special Order of the Day dated March 13 1945. It is signed by Subhas Chandra Bose.

Judge Advocate Is the whole of this relevant?

Pros. Counsel. No Sir.

(Special Order of the Day by Subhas Chandra Bose is examined relevant portions read, extracts compared with the original, found correct, marked OO signed by the President, and attached to the proceedings.)

Witness then produced another document entitled Special Order of the Day dated 19th March 1945. It is addressed to all officers and men of the Azad Hind Fauj. He identified the signature of Subhas Chandra Bose.

(Special Order of the Day by Subhas Chandra Bose dated March 13, 1945, is read (relevant portions), extracts compared, certified correct, marked PP, signed by the President and attached to the proceedings)

Pros Counsel Did you work at any time in the same office as Captain Shah Nawaz Khan?

Witness Yes, in the office of the Directorate of Military Bureau in Singapore from May 1943 up to about October 1943

Capt Shah Nawaz was the Chief of General Staff for most of this period. Latterly, he became the Commander of No 1 Guerilla Regiment

Witness then produced letter No 107/1/2/G from the officer of the M M B I.L.L. Syonan dated March 22, 1943, to the Headquarters, I N A Bidadari. It is signed by Capt Shah Nawaz Khan

Pros Counsel It is said on this letter 'Copy to Iwa Koru Kikan'. Can you tell the court what is 'Iwa Koru Kikan'?

Witness. It is a Japanese organization—a liaison organization between the I N A and the Japanese authorities

Pros Counsel It is a document signed by Captain Shah Nawaz Khan, sending to Headquarters the policy regarding the I N A (This is marked QQ)

Witness then produced a document dated 30-3-43 being a letter addressed to the Headquarters of the I N A, Bidadari. The letter is signed by Capt Shah Nawaz

(Counsel then read contents of document) It is read, marked "RR", signed by the President and attached to the proceedings)

Pros Counsel What were the functions of this special service group called the Bahadur Group?

Witness. The function was espionage, sabotage and infiltration

Witness then produced a letter signed by Capt Shah Nawaz Khan addressed to the Headquarters, I N A, dated May 27, 2603, headed "Policy regarding the disposal of categories B & C personnel"

(Counsel then read the document)

Counsel You say this letter is dated May 27, 2603?

Witness 2603 is the Japanese year equivalent to 1943

(Letter No 104/5/1/G dated May 27, 2603, is read, marked "SS", signed by the President and attached to the proceedings)

Witness then produced a letter signed by Capt Shah Nawaz Khan dated August 8, 2603, addressed to Headquarters No 1 Division, I N A

The document was read and marked TT.

Witness produced a letter signed by Capt Shah Nawaz Khan dated September 8, 2603, addressed to the Headquarters No 1 Division, I N A

This letter was read and marked UU

Witness then produced a routine order dated March 15, 1945, and recognised the signature of Capt D C Bhandari, as O C Details, No. 502 Unit, Azad Hind Fauj

Routine Orders dated March 15, 1945 (No 144) read marked VV, signed by the President and attached to the proceedings)

Witness then produced a (Special Order of the Day dated March 19, 1945, and recognised the signature on it as that of Capt Shah Nawaz Khan

Advocate General—This is in connection with murder charges I will keep the evidence regarding that separate, but the signature on this document can be recognized by witness

(Special Order of the Day dated 19th March 1945 (No 35) is read, marked WW signed by the President and attached to the proceedings.)

Witness produced No 531 Unit Operation Order No. 2 dated March 27 1945 and recognised the signature on it as that of Captain Shah Nawaz Khan.

(No. 531 Unit Operation Order No. 2 dated March 27, 1945 paragraph 2 read marked signed by the President and attached to the proceedings.)

Advocate General Lt Nag, regarding this portion which I read just now will you tell the court what Khanju meant?

Witness I do not know

Witness produced a document in pencil headed Information dated 2nd April 1945 and recognised the signature on it as that of Captain Shah Nawaz Khan

(Situation Report addressed to Major Kawahara dated 2nd April 1945 is read marked YY signed by the President and attached to the proceedings.)

Judge-Advocate: What does Hikri Kikyan mean?

Witness Hikri Kikyan is a Japanese organisation meant for doing liaison between I.N.A. and the Japanese officer

Witness then produced a letter dated April 6 1945, signed by Capt Shah Nawaz Khan.

(Confirmation of verbal orders, Serial No. 1, dated April 6 1945 is read, marked ZZ, signed by the President and attached to the proceedings.)

Witness then produced Order No dated April 6 1945 signed by Capt. Shah Nawaz Khan

(Operation Order No 6 is read marked AAA, signed by the President and attached to the proceedings)

Witness then produced an order dated April 1945 and signed by Capt Shah Nawaz Khan It was read and marked BBB.

Witness produced a diary for 1944 and its name is written in the handwriting of Capt. Shah Nawaz Khan

Pros. Counsel I am showing you the contents of the diary It starts on the January 1 1944, and I want you to tell the court whether you recognize the handwriting in the body of the diary in whose handwriting is it written?

Witness It is written in the handwriting of Capt. Shah Nawaz Khan.

Judge Advocate: Are you reading any extracts now?

Advocate-General. I propose to rely on certain entries only those which are relevant

(Diary is marked CCC relevant portions read, signed by the President and attached to the proceedings.)

(The diary for 1945 in the handwriting of Capt. Shah Nawaz Khan was produced Relevant portions were read and marked DDD)

Pros Counsel. What was Captain Sahgal in September 1942?

Witness. He was in the Hindustan Field Force Group in September 1942 In September 1943 he was Military Secretary His rank in the I.N.A. was Major He was wearing the I.N.A. badges of a Major Capt. Sahgal was Military Secretary until about February 1945 When he moved to the Headquarters of the I.N.A. in Rangoon he was acting as D.A.G. in addition to his duties as Military Secretary I had occasions to come into contact with him in connection with disciplinary cases of officers

In February 1945, he was appointed Commander of No 2 Infantry Regiment of No 2 Div. He came from Singapore to Rangoon in the beginning of 1944. He left Rangoon about the end of February or the beginning of March 1945.

Witness produced a document dated February 9, 1944, and signed by Capt. P K Sahgal, together with "Special Order of the Day"

(Letter No 245/2/2/A dated 9-2-44, together with "Special Order of the Day" by Subhas Chandra Bose was read and marked "EEE")

Witness produced a letter signed by Capt P K Sahgal dated June 16, 1944.

Prosecuting Counsel then read Para 3 of the letter which dealt with certain requirements of the army

(D O. No 16/2/16 MS dated 16th June, 1944, para 3, is read, marked "FFF", signed by the President and attached to the proceedings)

Witness produced a letter dated August 20, 1944, which was signed by Prem, "Prem is the first name of P K Sahgal".

Prosecuting Counsel. Will you kindly see the heading of that letter—Zaman?

Witness: It is Captain M Z Kiani

(D O letter dated August 20, 1944 beginning "Dear Zaman" is read, marked "GGG", signed by the President and attached to the proceedings)

Witness Captain Kiani was commanding No 1 Division in August 1944

Counsel then read the letter and during the course of reading asked Who is Lt-Gen Ishoda?

Witness: He was Chief of the Iwa Kōri Kikan at Rangoon

Advocate-General Can you tell the court what Harajiboota is?

Witness: One of the Japanese formations

Witness then produced a situation report dated August, 21, 1944

(Situation report dated August 21, 1944, is read, marked HHH, signed by the President, and attached to the proceedings)

(Letter No 103/2/11/G dated August, 31, 1944, to Headquarters, Hikari Kikan, is read, marked III, signed by the President and attached to the proceedings)

(Letter No S/2/210/21/12 dated 7-2-45 to No 202 Unit, A H F, is read, marked JJJ, signed by the President and attached to the proceedings)

Witness produced this Crime Report dated March 6, 1945. The words "Remanded for Divisional Commander's Trial" under the column "Punishment Awarded" are in the handwriting of Lt Dhillon, and the signature below it is that of Lt Dhillon. The words "Sentenced to death" are in the handwriting of Captain P K Sahgal, and there is the signature of Captain P K Sahgal under the column, "By whom awarded and date", and at the bottom of the Crime Report there is the signature of Lt G S Dhillon as Commander, Unit No 420

Advocate-General Can you recognize the handwriting of the words after the words "Sentenced to death" just before the signature of P K Sahgal?

Witness I cannot say in whose handwriting those words appear

(Situation Report from No 747 Unit A H F, subject Legy operations, is examined by the court, extracts read, marked LLL, signed by the President and attached to the proceedings)

(Signal message dated April 16, marked MMM, signed by the President and attached to the proceedings)

(Special Order of the Day by Lt -Col P K Sahgal, Officiating Commander, No 2 A H F was read and marked NNN)

Prosecuting Counsel showed a document to witness and addressing the court said —The document is in this form and it came to the prosecution in this form

There is a small diary in it and pages evidently taken from a diary. They are according to us as the witness will depose, in the handwriting of Capt Sahgal. Witness deposed that the handwritings were that of Capt Sahgal.

(Note book with diary pages inserted is examined by the court relevant extracts read and marked OOO)

Defence Counsel: I would like to know whether the remaining pages of this diary are still in the possession of the Prosecution.

Pros Counsel: No Sir. This is the only form in which it came to our possession. Exhaustive enquiries have been made.

Defence Counsel: Specially well-picked.

Pros Counsel: You can make whatever suggestion you like, but it is not a worthy suggestion to make without any grounds.

Judge Advocate: That is a matter of argument.

Defence Counsel: I only wanted information.

Judge Advocate: You have got it. That is the form in which the document was received.

Witness produced Order of March 26 1944, signed by Capt P K. Sahgal.

(Letter No 7/2/1/M.S. dated March 26 1944 together with a list of allotment of personal numbers/Officers is examined by the court marked PPP)

Defence Counsel (Mr Asaf Ali): All these appointments appear in a much longer document. I take it, it will be available to us.

Judge Advocate: What we do is to compare the extracts, certify them as correct and return the original. But we must examine the original first.

Mr Asaf Ali: My only point was whether the whole document would be available to us.

Judge Advocate: Yes, always.

Counsel: When did you meet Lieut. Dhillon first?

Witness: After we were taken prisoners in Singapore in February 1942. After I was discharged from hospital I met Lt. Dhillon in Neeson camp about the month of March or April 1942. In September 1942 he was at Headquarters, I.N.A. at Bidadari.

He was officer in charge of Supply and Transport in the Q Branch of the Headquarters. In May 1943 he was in Bidadari. He was at the I.N.A. Headquarters at Bidadari in the Q Branch and I met him once or twice when he came to the Directorate of Military Bureau Headquarters in Thomson Road in Singapore.

In October and November 1943 he was second in-command of No. 1 Infantry Regiment which used to be known as Hindustan Field Force Group before. He was a Major by this time. After he came to Burma in August or September 1944 he was given command of No. 4 Guerilla Regiment and he went to Mandalay to take command of that Regiment.

Witness produced a letter dated 22/12/44 addressed to the Liaison Officer Hikari Kikan and initialled by Lt. Dhillon.

(Letter No. A/19/18 dated 22/12/44 to Liaison Officer Hikari Kikan, Myingyan was read and marked OOO.)

Witness then produced a letter dated 22/12/44 addressed to the Liaison Officer Hikari Kikan and initialled by Lt. Dhillon.

(Letter No. A/19/18 dated 22/12/44 to Liaison Officer Hikari Kikan, Myingyan was read and marked OOO.)

Witness produced an order dated March 2, 1945, and signed by Lt Dhillon. The order was read by Counsel.

(Letter No 6/5/9 dated March 2, 1945, "Secrecy and Security", was marked "RRR")

Witness produced another order dated March 2, 1945, and signed by Lt Dhillon. It was read by Counsel.

(Letter No 6/6/G dated 2nd March 1945, reference "Password" is marked "SSS")

Witness then produced Intelligence Summary No 3 dated 3rd March 1945. Relevant portions were read.

(Intelligence Summary No 3, No 501 Unit, dated March 3, 1945, is marked "TTT")

Witness produced Intelligence Summary Report No 4, dated 4th March 1945.

(Intelligence Summary No 4, 501 Unit, dated March 4, 1945, is marked "UUU")

Witness produced Operation Order No 2 dated March 6, 1945, signed by Lt Dhillon.

Q The order itself is signed at the end. Then there is a communication in manuscript. By whom is it signed?

A That is also signed by Lieut Dhillon.

(Operation Order No 2 is marked "VVV")

Counsel (to Court) The next document is a counterpart of the crime report already put in.

Witness: I produce the crime report dated March 6, 1945. Under the column headed "Punishment awarded" the words "Remanded for Divisional Commander's trial" are in the handwriting of Lt Dhillon and signed by him. The words 'Sentenced to death' are in the handwriting of Capt P K Sahgal and signed by him. At the bottom of the crime report is the signature of Lieut Dhillon.

(Crime Report IFT 901 is marked "WWW")

Witness then produced Intelligence Summary No 5 dated 7th March, 1945, signed by Lt Dhillon.

(Intelligence Summary No 5 is marked XXX)

Witness produced a letter signed by Subhas Chandra Bose to Major Dhillon.

(Letter from Subhas Chandra Bose to Major G S Dhillon, dated March 12, 1945, is marked YYY) signed by the President and attached to the proceedings)

Witness produced a Battle Report dated March 18, 1945 (Battle Report No 4 from Unit 450, dated March 18, 1945, is marked ZZZ)

Witness produced a letter dated March 20, 1945, signed by Lt. Dhillon.

Counsel It appears to be a reply to the letter I read from Subhas Chandra Bose.

(Letter in manuscript from Lt G S Dhillon to Netaji dated March 20, 1945, is marked AAAA)

Witness produced Battle Report No 5 dated March 25, 1945, (Battle Report No 5 dated March 25, 1945, is marked BBBB)

Witness produced Operation Order No 2 by Lt Dhillon.

(Operation Order No 2 from Unit No 170 to 173 is marked CCCC)

Witness produced a signal message dated April 2, 1945.

(Signal No D-5, dated April 2, 1945, is marked DDDD)

Witness produced the Indian National Army Administrative instructions by Executive Committee of the I N A dated February 20, 1943. It is signed by Capt M Z Kiani.

cut down 112 Out of these we have examined 35 and 5 are still in hand So, it comes to 40 That leaves a balance of 72 I received a notice from the Bahadurgarh Area that out of these, 12 would be available immediately, but we have not been able to interview them for the reasons stated by my leader The accused are here and it is not possible to interview the witnesses while the accused are not present As regards the rest, Lt-Col Walsh perhaps knows better I have received no notice whatsoever about the availability of others Some of them are Japanese witnesses Then, I wish to see Lt-General Percival In so far as Lt-Col Hunt is concerned who is about the most important witness in the case, he is in the U K

Lt-Col Walsh I must make a point at this stage Lt-Col Hunt has been interviewed by the defence He was called by me to Delhi and he was interviewed by the defence on my arrangements It was only after consultation with the defence that he was allowed to go to the United Kingdom

Mr Asaf Ali I should like to correct my friend, Col Walsh, on this point Was he interviewed by any of the Counsel present in court?

Col Walsh I am afraid I cannot say because I was not there

Mr Asaf Ali He was actually interviewed by Capt Sahgal's father who was accompanied by Rai Bahadur Badri Das, and on that occasion all that really did take place was this Lt-Col Hunt was there and they talked to him He said he had just returned from imprisonment and he was proceeding home It was a sort of a social meeting rather than an interview with a witness No material question was put and no answer was elicited And I think Lt-Col Walsh will appreciate the fact that he was not pressed to stay on as he was proceeding home I am not asking for a second that I want him immediately, but he will be wanted at some stage or another It is, however, my duty to point out that he is one of the most important witnesses who will have to be examined either here or otherwise This is the position and now it is for the court to decide how much time we should have My leader has said that the matter rests entirely on your discretion

Judge-Advocate There is one point about that Lt-Col Walsh stated that Lt-Col Hunt was interviewed by the defence and told he could go Can the learned counsel who interviewed him tell us the exact position?

R B Badri Das What happened was that when he told us that he must go on account of his health we said we could not help it and we would take our chance He said that he would be out of India for about three months We said we do not know whether the trial will last till then No statement was taken from him He said that it was arranged that he was definitely going on medical advice and could not stay, but he expected to return in about three months' time We did not take any statement from him because the accused were not present He said that he may not be able to depose very much because his memory may fail and so on We said we shall take a chance and see what can be done But in the absence of the accused we could not have any definite statement. We met him when we were going home

Judge-Advocate I should have thought that the mere fact that he was going home was all the more reason for having a statement

R B Badri Das That would be no good because the statement would have to be taken before the accused

President That surely could have been arranged at the time

Mr Asaf Ali The accused were not available at the time when Lt-Col Hunt was present Without receiving instructions from the accused it was impossible to interview Lt-Col Hunt and he had to proceed home.

Judge-Advocate At any rate he has not interviewed Lt.-Col Hunt although the opportunity did present itself

Mr Asaf Ali I should not like to say a word about it

Judge Advocate Eventually the court will have to decide on the materiality of the evidence which Lt Col. Hunt has got to give before deciding whether he must be called

Mr Desai As regards the materiality I may tell you subject to what the court decides we cannot help pointing out that his material the terms of the surrender, is the most material thing in this particular case That is with a view to indicate that there is nothing frivolous in this—trying to get a sick man here

The position is this Lt Col Walsh has frankly told us that some of the witnesses will be available within a fortnight How many more will be available we do not know and on that you have to decide I have never attempted to argue too much on this issue

Pros Counsel Will Lt Col Walsh be allowed to make a statement as regards the interview with Lt Col Hunt? He made a report on it to his superiors at the time

Lt Col Walsh. The matter should be put in its proper perspective. Lt.-Col. Hunt's evidence would be on a very narrow issue i.e., what happened at Singapore on the 17th February 1942 when the Indian prisoners of war were handed over to the Japanese Realising that that was of importance I took all steps necessary to arrange that Lt Col. Hunt should arrive in Delhi and should be submitted to the defence for interview On the 6th October 1945, at a time when the accused were available within this compound I wrote a note to my superior officers in these terms:

I contacted Lt Col Hunt in Delhi and arranged for him to be interviewed by the legal advisers of the three accused officers in this case They stated that they did not require Lt Col Hunt's continued presence at that stage and agreed that he should proceed on leave to England It is understood that should the defence require Lt Col Hunt's evidence at a later stage arrangements will be made for him to return to India.

Judge-Advocate I think we have heard enough of Lt. Col. Hunt at the moment What about certain other witnesses? Can you tell me more specially in connection with the report that Mr Desai asked for namely Field Marshal Wavell's report on the Malaya campaign which has not been published We are all men of the world and we know that if unpublished official documents are asked for privilege may be claimed in respect of them

Mr Desai Then it will have to be decided on the basis of the Indian Evidence Act As regards the admissibility of the affidavit or otherwise in support of the privilege it will be for the court to decide

The court adjourned at this stage to consider the plea for adjournment.

Judge Advocate The court have directed me to announce that they will adjourn until Wednesday Nov 21 and the Court will reassemble at 10 a. m. on that date

On Nov 21 when the court reassembled, Lt Nag, the first prosecution witness, was cross-examined by Defence Counsel Mr Bhulabhai Desai

Lt Nag I was a member of the I.N.A. from September 1942 up to the time I was brought to India from Rangoon on May 18 1945 I functioned in the I.N.A. from September 1942 up to December 1942 and then again from

May 1943 upto the end. In the interval there was a crisis in the I N A. and everybody discontinued to remain in it for a time during which period I was taken to a Separation Camp in February 1943. In substance there was one I N A which was dissolved and another I N A which I later joined. I do not know when the second I N A actually came into existence, but I heard when I was in the Separation Camp that the second I N A started to function about February or March 1943.

"Taking the whole period together I held two offices—the Judge Advocate General and Deputy Adjutant General. As Judge Advocate General I was in charge of the Legal Department of the I N A. I drafted the I N A Act. After finishing that job my usual function was to see to the legal administration of the army, that is to say, look after the court martial proceedings, courts of inquiry and other disciplinary cases. I was General Legal Adviser to the I N A.

On the 21st October, 1943, the provisional free India Government was proclaimed. I continued in my old job as legal adviser of the I N A. There was a separate legal adviser of the Free India Government. His name was Mr Sarkar. I do not know very much about his qualifications but I know that he was a member of the Bengal Civil Service. He was also a member of the provincial civil service. He was qualified to advise on legal matters.

On the outbreak of the Japanese war I was at Penang. On the 8th December, 1941, war broke out and on the 15th December, we evacuated Penang. We moved first to Taiping and then eventually reached Singapore about 25th or 26th January. I was quite well when I reached Singapore. I was taken ill on the 15th February 1942 because I was wounded in an air raid. When I was discharged I was in hospital at Neeson camp. About a fortnight after my discharge from hospital I came to know that Capt Shah Nawaz Khan was commandant of that camp. I did not see him functioning as camp commandant while I was in hospital.

I accepted voluntarily my appointment as J A G. My first function was to prepare the I N A Act. The I N A was intended to be an organised army and work according to a civilised code. That was the object of framing the Act. The provisions of the Act were obeyed by the army throughout the period until I ceased to function.

On the 21st October, 1943, I was present at a mass meeting at which the establishment of the Free India Government was announced. I attended that meeting as a visitor. The meeting was composed of I N A personnel and Indian civilians and some Japanese officers and Indian delegates from countries in East Asia. I was aware that there was an Indian Independence League in existence when I joined the I N A in September, 1942. It had numerous branches, principally in Malaya State and also in Burma. These branches elected delegates who attended this conference. I heard Subhas Chandra Bose saying that the Indian population in East Asia was about two and a half millions. These delegates were representatives from those countries. I was there from the commencement of the ceremony on the 21st October, 1943. Netaji is Subhas Chandra Bose. Netaji means revered leader. The ministers who had been appointed by Subhas Chandra Bose took the oath of allegiance. The delegates did not take any part. They were watching as visitors. The declaration of Provisional government was acclaimed by them. There were about five thousand people present including visitors and sightseers. I heard Subhas Bose making the declaration. I have seen the proclamation read out and I do not remember whether this was read out on the 21st October, 1943. I heard Subhas Chandra Bose making a proclamation announcing the establishment of the provisional government of free India. I saw the proclamation in the records. I do not know when I saw it. Records were

properly kept. The proclamation is a correct copy of the one kept in the records (The proclamation put to the witness by the defence counsel is marked FFFF) I agree that the names of the ministers were those who signed the proclamation

I knew an institution known as the Azad Hind Bank. I think Subhas Chandra Bose moved about the beginning of 1944. I had no direct touch with Subhas Chandra Bose. I had a conversation with him on two occasions about disciplinary cases. In April 1944 in Maymyo I lived in the same house as Subhas Chandra Bose. I never talked to him except on those two occasions which I have spoken of. One of these occasions was after April 1944. I dined with him in the same house but I had no opportunity of having a conversation with him. I know that large sums of money were donated by Indians in all parts of Asia to the provisional government. They were banked with the Azad Hind Bank. The maintenance of the army required large sums of money. I lived about 30 yards away from where the bank was located in Rangoon. The maintenance of the army was managed by the Finance Department. The army was paid regularly and maintained regularly. The accounting officer was Major Murty. I was working in the same office as Major Murty. Major Murty was governed by the finance officer of the Government. I do not know his name. Lt. Col. Chatterjee was Finance Minister in the beginning and later I think, Mr. Raghavan. The latter took over some time in 1944.

When I was at Maymyo I met Ehasan Qadir. I was aware that he was there with the Azad Hind Dal. The object of that organisation was to administer the territory occupied by the I.N.A. from time to time. It was composed of civilians who had been given some training in civil administration in Singapore and in Rangoon. Lt. Col. Chatterjee was a Governor-designate of the territories occupied by the Azad Hind Government. I went through a draft scheme of the administration of occupied territories. I examined the scheme given to me by Lt. Col. Chatterjee. I thought it a good scheme. I am aware that the Andamans and Nicobar were ceded to the Provisional Government. This was about the end of 1943. I know that an Administrator was appointed and his name was Lt. Col. Loganathan. He was there for about 8 months. Lt. Col. Loganathan had to come away due to illness and he left Major Alvi behind. At Singapore on one occasion I was present at a passing-out ceremony of the personnel of the Azad Hind Dal. I think about 200 people were trained for this organisation. There was a Gazette published by the Provisional Government. The appointments in the I.N.A. were published in the Army Gazette. I have knowledge regarding the co-ordination of the Indian National Army and the Japanese forces. They functioned as Allies. I know Major General Yamamoto and Lt. Col. Ogawa of the Japanese liaison in the Hikari Kikan. I do not know of any other liaison of the Department. On the establishment of the Azad Hind Government war was declared by them on Britain and America. There was an Ambassador sent from the Japanese Government to the Azad Hind Government. The name of the Ambassador was Mr. Hachuya. The Azad Hind Government was recognised by Germany, Japan, Italy, Thailand, Philippines, Croatia and Manchukuo. That is all I remember. It was also recognised by the Burma Government which was then functioning. I know that the Burma Government had a defence army. I met General Aung San on one occasion. He was then the head of the Burma defence army.

When the I.N.A. was formed its object was to fight the British for the liberation of India. The object of the Provisional Government was to protect the Indians in East Asian countries, i.e. their lives, honour and property. The I.N.A. assisted in protecting Indians in Burma in April 1945 until 3rd May 1945 when Rangoon was occupied by the British. I am aware that there was const-

derable disorder after the occupation of Burma by the Japanese and in Malaya also. The Provisional Government tried to protect the Indians, but I do not know through what agency.

After the British surrender of Singapore on February 15, 1942, there were three or four camps for Indian prisoners of war. They were Neesoon, Bidadari, Seletar and Buller camps. Subsequently, there was another camp at Kranji and one or two other places. At Neesoon, Bidadari and Kranji camps there were large hospitals for prisoners. There were about five to seven hundred beds in each hospital. After my appointment as J A G I was in hospital only once. That was in March, 1943. I was in Bidadari Hospital. When I was told I was going to Seletar I was told I was going to a camp at Seletar which had no hospital. There are two camps at Seletar. There was one hospital at Seletar where any prisoner of war could be admitted. We were told that we could not be sent to the hospital although we were at that camp. I was told that I was not going to be sent to Seletar Hospital although I was a patient at Bidadari at the time. I was not specially selected for not going to hospital, it applied to everybody. When I was in Bidadari Hospital we were all told that if we did not continue in the I N A we would not go to Seletar Hospital. There were some V C O s in Bidadari Hospital with me at the time, I do not know their names. I cannot identify them by description, either about their units or otherwise. I left Bidadari Hospital at the end of April 1943.

I did not continue to serve in the I N A voluntarily after I left hospital. The Commander of the first I N A was Captain Mohan Singh. He was arrested by the Japanese in December 1942. He had differences with the Japanese authorities. I do not know what they were.

Mr Desai: Do you ever remember attending a meeting in Singapore at which Capt Mohan Singh told the prisoners of war that if need be they would fight the Japanese in addition to the British?

Lt Nag: He said he would fight anybody who stood in his way. He implied the Japanese and everybody.

(Original summary of evidence is marked GGGG)

In October 1943, the feeling was that the I N A was functioning well. Capt Mohan Singh left written instructions that if he was arrested the I N A should be dissolved and all I N A badges of rank and records will be destroyed. There was a general feeling from the beginning that the I N A should not be subordinate to the Japanese and that we would not allow it to be subordinated to the Japanese. There was no question of dissolving it at any time during those days. The predominant motive was to free India for the sake of Indians.

After the 2nd I N A was formed the same feeling was there until Subhas Chandra Bose arrived in July 1943. After that everybody thought that they had got a leader who could guide them on proper lines without being subordinated to the Japanese. Thereafter the two armies fought as allies, i.e., the Indian National Army and the Japanese.

The whole of the Indian National Army was trained by Indian officers and not by Japanese officers. It was entirely and throughout officered by Indian officers and not by Japanese officers. The colours of the Indian National Army were the Indian National Congress colours, i.e., saffron, white and green. Their badges were distinct from the Japanese badges. The chocolate coloured star with red centre on the arm band with Congress flags marked I N A was resented by the personnel of the I N A as it might be mistaken for the Rising Sun of Japan. Its use was discontinued in the 2nd I N A.

Regarding the administration of the Andamans and Nicobars I did say that the administration was not in accordance with the scheme approved by me. I heard this from the Administrator. Of my own knowledge I cannot say how the administration was carried on. I heard Subhas Chandra Bose state at a meeting held soon after the meeting of the 21st October 1943 that any one who wished to leave the I N A was free to do so. I N A. personnel were present at this second meeting.

Q Do you recollect Subhas Bose saying at this second meeting 'When the Azad Hind Fauj launches its fight it will do so under the leadership of its own government and when it marches into India the administration of liberated tracts will automatically come into the hands of the Provisional government. India's liberation shall be achieved by Indian effort and sacrifice through our own fauj.'

A Yes I remember a statement made by Subhas Chandra Bose at a meeting of the 21st October.

(This statement is read by the defence. Copy is marked HHHH.)

Lt Nag: At that meeting on the 21st October 21 there was a national anthem. The Bande Mataram song was sung. Afterwards there was another national anthem, the words of which I know by looking at them as written. Words of the national anthem are read to the witness who recognises it as correct. (Copies marked IIII) The song which was afterwards composed was acknowledged as the national anthem by the Provisional Government. The Indian Independence League had an enrolment form for civil volunteers which was used from time to time. I now produce enrolment form of civil volunteers. This was one of the earlier forms in use before the Azad Hind Government was formed. I do not know whether it was continued afterwards. (Enrolment form for civil volunteers is marked IIII) After I came to Burma I did not see this form. I do not know of any other form. The form of enrolment was always used for the enrolment of a civil volunteer.

I remember a meeting being held at Jalan and Besar stadium on October 25 1943. I was not present at the meeting. I produce a photograph of Subhas Chandra Bose reading a Proclamation at a meeting on the October 21 1943. I saw myself this photograph being taken.

I am shown exhibit SS. This is signed by Captain Shah Nawaz Khan.

I have seen in Singapore a weekly paper called Jai Hind or Azad Hind. It was in Malaya but not in Burma. It was published by the Azad Hind Government. I do not know of any daily newspaper being published by the Azad Hind Government.

Lieutenants in the I.N.A. received Rs. 80 per month all found. This was called pocket allowance. I am not quite sure about these figures—they are approximate only. Captains received Rs. 125 per month. For Majors there were different rates in Malaya and Burma. The Majors seemed to get Rs. 180 pocket allowance and all found in Malaya. I think it was Rs. 230 to Rs. 235 per month all found in Burma. Lt.-Cols. received Rs. 330 per month all found (approximately). Colonels received Rs. 400 per month all found.

There were a number of people evacuated from Burma on the advance of the Japanese.

I know that there was a medal awarded to Mr. Habib in Rangoon. It was called Sevika Hind. It was awarded for making a huge gift to the Provisional Government of Azad Hind. He gave a very large amount, running

into many lakhs I was present when the medal was awarded There were military decorations also

Re-examined by Counsel for Prosecution, Nag said When I was in hospital in Bidadari in March 1943, I was told by the commanding officer of the hospital that orders had been received that patients who were not willing to continue in the I N A would be sent to Seletar Camp; and when I inquired whether there was provision for treatment there, he said 'No' He said that unless I joined the I N A, I would go there I said "All right, I will join" After that I continued in the I N A

The Nicobar and Andaman Islands were ceded by the Japanese Government I was present in Singapore when Lt-Col Loganadan was leaving for the Andamans and he had with him about two officers and four or five clerks As D A G, I would have known whether there were any I N A forces in the Andaman Islands and I know there were no such forces When I said that the Azad Hind and the Japanese acted as allies I meant that they were acting as equal partners

Re-examined by the court, Lt Nag said Just before the re-occupation of Rangoon, the I N A were defending the Indians in Burma against the Burmese

Re-examined by Judge Advocate, Lt Nag said When I saw the three accused they were wearing I N A badges except for a short period in January to the middle of February 1943 I saw them wearing the badges from September 1942 I have seen Captain Shah Nawaz Khan wearing the I N A badges of a Colonel I have seen Captain Sahgal wearing the I N A badges of a Lt-Colonel I have seen Lt Dhillon wearing the badges of a Major

In March 1945, the accused Capt Shah Nawaz Khan was commanding No. 2 Division The accused Capt Sahgal was commanding an Infantry regiment of No 2 Division and Lt Dhillon was commanding No 4 Guerilla Regiment That was also in No 2 Division In March 1945, No 1 Bose Regiment was not up to strength It was very much depleted, it was more than 50 per cent depleted Gandhi Regiment was also depleted No 4 Guerilla Regiment (Nehru Regiment) was up to the strength All the regiments in No 2 Division were more or less up to the strength All the regiments of No 1 Division were very much depleted after the operations at Manipur in 1944 No 2 Division was coming up to Burma about that time from Malaya No 3 Division was in Malaya It was composed almost entirely of civilians

Capt Sahgal came to Rangoon about December 1943 or January 1944. At the meeting on October 21, 1943, I saw, besides Capt Shah Nawaz Khan, Capt Sahgal and Lieut Dhillon also They were like visitors They were in the audience

The Court called upon the Counsel for Prosecution to show a relevancy under the Indian Evidence Act, Sec 136, in respect of further evidence to be called

Counsel for Prosecution I am dividing my evidence into certain groups One group of witnesses will depose to the fact that recruiting was done by the accused among the prisoners of war and they visited the war camps, the separation camps and the concentration camps They were aware, according to my submission, of the atrocities that were committed in these camps, and recruiting for war is, if not actually waging war, at any rate making preparation for war, and that would come under the Evidence Act And the atrocities that were committed were committed openly and notoriously If I am entitled to show, as I submit that they tried to win over other prisoners of war from their allegiance to the Crown in order to join with them in waging war against

the King I am also entitled to show the conditions under which they did this recruiting work. I am entitled to show that with knowledge that atrocities were inflicted on prisoners of war in order to make them join the I.N.A. they themselves took part in recruiting and trying to win over the prisoners of war to join the I.N.A.

There will be evidence to show that in the speeches which they made they referred to the conditions prevailing and to the hardships which they were undergoing and they held out promises that if the prisoners of war did join the I.N.A. they would forget those hardships and get better treatment. They also held out veiled threats as to what would happen if they did not join the I.N.A. These, I submit are part of the offence with which they are charged and I am entitled to rely on that and prove that.

Some of the speeches which they made were not only before December but after December 1942—the efforts which they made to win over the Indian prisoners of war to join the I.N.A., and I submit that it is not necessary for me to show that they were actually present when torture was inflicted on Indian prisoners of war to join the I.N.A. It will be sufficient for my case to show that these atrocities were committed openly and notoriously and that they were aware of that. And with knowledge of that they continued to press the Indian prisoners of war to join the I.N.A.

I submit they are all connected together with the charge of waging war against the King and they are relevant, and I submit evidence on these questions will be admissible.

I first propose to examine witnesses who will depose to the fact that they did make speeches before the Indian prisoners of war and used phrases which I have just mentioned. And I will follow that up by leading evidence to show what conditions prevailed in the prisoners of war camp and in the concentration camp and the separation camp and as to whether they were aware of these atrocities.

Counsel for Defence: We must analyse the kind of evidence my learned friend proposes to call. I will take the last first, viz. making speeches or otherwise inviting or inciting prisoners of war to join the I.N.A. Then the next set of allegations, according to my learned friend, which he proposes to prove is that by some persons other than the present accused some treatment was given of which all that he alleges is that they came to know. I have never yet heard of any law that merely because you know that somebody has done something, that knowledge constitutes an offence. It is an extraordinary argument made before this court and I know the reason. The reason is that they cannot bring home to these accused any dishonourable conduct. Failing that, they now hopelessly try to do this somebody did something and they heard about it and knew about it. If my friend thinks that a great deal of padding is necessary he can well have it, namely, that they made speeches asking them to join the I.N.A.

My case is that in some cases the alleged speeches were not made and in some cases they were made at different periods of time. If my learned friend thinks that that part of the case has any value in proving the waging of war he is entitled to that satisfaction, if the court thinks that the matter should be extended to that plane. They have put in documents that they joined that army and that army fought, but now to go back and say that their great grandfathers did something is something which does not appeal to reason. The Crown cannot plea *res gestae*. That is a matter which is essentially so connected that it is necessary for the court to know whether actual relevant acts were done.

Then he goes on to the tortures or atrocities. As far as the summary given to us is concerned, I make bold to say that there is no allegation by any of the witnesses that any one of the three accused ever did anything of the kind and I say that after having carefully studied it. And there are no charges against the accused of that kind. There are charges against other accused like Shingara Singh, Fateh Khan and Ablul Rashid of an indirect participation in any acts or alleged acts of atrocity.

But merely because in the process somebody individually was guilty of any such act—I submit that mere knowledge that it was being done—and assuming all that against myself—it raises the argument of relevancy. If the court goes into it, it will be our duty to show that we have no knowledge of it. But I am assuming for the moment that in some places by some persons these allegations of torture can be borne out. Even so, my learned friend cannot say anything more than they had knowledge of it. He has cited nothing and nothing can be cited. That because a man has knowledge of some act, the person knowing it is guilty of any offence.

I emphasise this that in so far as the charges against the accused are concerned, there are only two sets—one of waging war and the other doing or abetting the murder of four persons. They fall under ten heads, but the substance is only that and in fact it is amazing that in the first series of summary there is not even the suggestion that they knew about the alleged beating. It is only during the later stages that they were given a statement of seven witnesses, and even then none of these statements shows that they participated directly or indirectly in any incitement. Therefore the utmost they can say is that they came to know it, and the use by my friend of the word 'notorious' does not carry it any further. My friend's theory of penal law is that if you hear of something wrong and know of something wrong, that is an offence. But that is not an offence with which they have been charged, I daresay if they wanted to make it an offence that A or B did this, they should have formulated that charge.

I submit that a statement of this kind must defeat itself. Because in the first instance there is no charge. In the second instance let me attempt to frame a charge that you knew that somebody was torturing somebody. There is no section of the Act about this that I know of, and there is no obligation of any kind laid down by law. Therefore my submission to the court is—my respectful suggestion to the court is, I have no right to say any more—that on the question of their assisting recruiting if the court require any evidence—notwithstanding the fact that more direct acts have been proved—the court is entitled to it. But as to the rest my submission is that it is totally irrelevant and should not be allowed. It is to create a prejudice against honourable men, who on their own showing, took no part in any of the atrocities. I take it that a tribunal of this kind will set its face against such an attempt to prejudice it. By all means, let those who commit torture be brought before this or any other tribunal.

Therefore, my submission is that the first part may stand, but the second part is totally irrelevant. Waging war itself is grave enough. But if he thinks he can add that by mere knowledge that somebody else committed it, I submit it is totally irrelevant. If a witness is called and he deposes, for example, that a speech was made, it may be allowed, but when he proceeds to talk about somebody else having committed something else merely on the ground that he came to know about it, I trust the court will rule it out.

Judge Advocate —Sri Noshirwan. Do you base your submission on any particular section of the Evidence Act?

I knew about the formation of the Indian National Army on that morning at Farrar Park. I never had anything to do with the Indian National Army. I always tried to prevent my own regiment and any other people who came to ask me what I thought about joining the I N A. from doing so. While I was in Neesoon I was put under close arrest for three days. After that I was removed to Bidadari camp with the rest of my camp. I went from there on March 21, 1942, to Buller and from there I came back before I left Singapore. I cannot remember the date. I remained in Buller Camp for about ten days. Approximately, there were between 7 000 and 10 000 prisoners of war. I remained in Bidadari for two days. After that I left for Thailand with one thousand men. General Mohan Singh sent me to Thailand with a thousand men to do fatigues. I left Bidadari on March 21, 1942, and arrived in Thailand on April 1, 1942. We were kept in a POW camp. I was commanding the camp and a 2nd Lt. Shimikura was liaison officer. He was a Japanese. There were 8 British commissioned officers and I cannot give you the exact number of V C Os. in the camp. All the officers were Indians. On April 21, six of us including myself were removed. We were taken to a place called Kelpitai. We were taken in a lorry which was covered with a white sheet. I remained in Kelpitai for 88 days. We were released on July 18, 1942. We were taken from there to Singapore. We arrived there on July 22, 1942. We were taken straight to the bungalow of Mohan Singh and from there sent to Buller Camp. That camp was commanded by Captain Prakash Chand. It was a mixed camp. We had a certain number of volunteers and some prisoners of war. We were kept in this camp in segregation. Nobody was allowed to talk to us. We were allowed one orderly. On August 18, I was removed to the Concentration Camp. It was very near Bidadari Camp. The conditions were very bad. I was not treated as an officer. For the first seven days we were kept in an 80-pounder tent which was full of white ants. We were then removed from this tent to a hut about 500 yards away to a cement hut. We had to fall in with the other prisoners to collect our food. The food consisted of rice, sometimes dal and mostly some form of spinage. The camp was commanded by one Shingara Singh with Fatch Khan as his second in-command. There were a lot of wire fences in which a lot of Indian ranks used to be kept throughout rain and sun. On quite a number of occasions I saw quite a good few Indian ranks being beaten by Fatch Khan. The guards and sentries were mostly Sikhs. We had to salute these sentries and if we did not wear headgear we had to bow to them. Those who were beaten were mostly Indian ranks. I do not know the names of anybody. The men were working for about 8 to 10 hours. This was in the Concentration Camp. The prisoners of war there were made to work 8 or 10 hours a day. If during the working time they felt tired and wanted to rest they were immediately belaboured by the guards with sticks and forced to work again. I myself was never made to work, but I started some sort of body rash. When I went to the hospital to ask for some medicine, I was told I could not have any. On one occasion the entire 6/1st Punjab Regiment made to live in the open space for two or three days. I do not know the reason why these people were made to live this way. From there we were removed to Bidadari to an officers Separation Camp. There were about 40 officers there. The living conditions were slightly better than in the Concentration Camp. There were 16 of us who were living in a room about 10 feet long and 10 feet wide. There was no furniture and we had no electric light. The food was much better than in the Concentration Camp. We were made to work, cleaning up the garden and the ground for 4 to 5 hours a day. We had to wash and clean our own utensils as no orderlies were provided for us. During my stay in the Separation Camp quite a good few officers of the I N A. used to come to this camp and try and do propaganda with a view to making us join the

Captain Mohan Singh who asked me to go to Thailand. When I was ordered to go to Thailand the process of separating volunteers from non-volunteers in Singapore had commenced. It was as a part of that process that I was sent to Thailand. When we reached Thailand there was a camp where we were all living together. The treatment in the Thailand camp was good. I remained in that camp until April 21, 1942. I do not complain of my treatment here.

On August 18, 1942, I was removed to a concentration camp very near Bidadari Camp where a contingent of the Bahawalpur Infantry arrived—V.C.O.s and officers. None of us were ill-treated. There were people living in tents about 150 yards from me. I was not allowed to go to them. In fact I did not go. I do not know who they were. I was concerned with what was happening there inasmuch as I was interested in the welfare of the prisoners of war. I was the senior officer there. I was not the officer of the people who were 150 yards away from me. That camp extended for another 300 or 400 yards. I saw some beating in the other camp.

I was then moved to a place called the Officers Separation Camp at Bidadari. It had a board on it "Officers Separation Camp". There were about 40 officers there. Later on we were joined by Viceroy's Commissioned Officers bringing the total to about 120. I was there until October 2. The discussions took place there. I knew Capt. Sher Dil Khan. Capt. Shah Nawaz Khan came there, but I do not know whether he came to see Capt. Sher Dil Khan. I was not invited to a discussion. I was living in the room and I overheard certain conversation. I was addressed but not by any of the officers present here. Capt. Shah Nawaz Khan was speaking to 16 other people. The gist of his conversation was "Why do you not join the Indian National Army?" In this Separation Camp we were given one towel each and five dollars, and we had our rations. The rations were not good but they were alright. We were taken out from that camp once by Mohan Singh to a seaside place called Ponglon.

I know Capt. Mohd. Zariff. I only know him by sight.

Judge Advocate. Captain Shah Nawaz Khan came into the room. He had lots of friends amongst the officers living there. There was general talk. I cannot remember for certain whether Captain Shah Nawaz Khan advised the officers present to join the I.N.A. In the Separation Camp in which I was to the best of my knowledge nobody was beaten. All the guards and sentries were Indian Army N.C.O.s and sepoy.

Subedar Major Baboo Ram, 1/14th Punjab Regiment, examined through the interpreter stated:

When the war broke out I was a Subedar Major in the Indian Army. I was serving at Jitra at the top of Malaya with the 1/14th Punjab Regiment. Our battalion was in action at Changlung. After three days of fighting we were ordered to retire and we gradually retired back to Singapore. [Noted by the court. At this stage the court decides that the interpreter is incompetent and adjourned for 45 minutes in order that the prosecution may obtain a fresh interpreter.]

When the court reassembled Major Banwari Lal was duly affirmed as interpreter. Subedar Major Baboo Ram further stated:

When my battalion arrived in Singapore it was very much depleted owing to casualties. When my battalion reached the naval base at Singapore, my battalion was amalgamated with the 5/14th Punjab Regiment. On February 15, my battalion was in Ilkaf Garden near Bidadari. An order was received in the even-

ing that Singapore had been surrendered to the enemy and all the arms of the battalion would be collected. The arms were collected on February 16. The arms were taken away by the Japanese. On the evening of February 16, an order was received that all Indian troops will go to Bidadai Camp and they did go. On the evening of the same day an order was also received that all the Indian troops would collect at Farrar Park. My battalion under the command of Capt M Z Khan went from the camp to the Farrar Park. Many POWs. had already assembled there and more of them continued to come in after we went there. At 2 or 3 o'clock in the afternoon there were about 15,000 POWs there. There was a building in that park and on the balcony of the first storey of that building some officers were sitting. Amongst those officers there was a British officer, Lt-Col Hunt, and there were also some Japanese and Indian officers as well. The Indian Army officers were dressed in the Indian Army uniform. They had some white arm bands on their shirt sleeves marked 'I'. Lt-Col Hunt spoke through the microphone and asked the whole gathering to stand up. Then, he ordered the audience to stand at attention. He then proclaimed that as a representative of the British Government he was handing us over to the Japanese. Then he advised the gathering to obey the order of the Japanese in the same way as they obeyed the orders of the British Government, otherwise they will be punished. After that he handed over certain papers to Major Fujiwara, a Japanese officer. Then he saluted him and went back. After that Major Fujiwara came to the microphone and made a speech in the Japanese language which was translated into English and then re-translated into Hindustani. He said "As a representative of the Japanese, I have taken you over. My Government is not prepared to keep you as prisoners. So far as we are concerned you are free. We are short of rations and you will have to do some fatigues. I hand you over to Captain Mohan Singh, who will be the Supreme Commander and you will have to obey his orders." After that Captain Mohan Singh came to the microphone and said "The British have handed you over to the Japanese and the Japanese are not prepared to keep you as prisoners and they are also short of rations. We are forming an Indian National Army which will fight to free India. Are you all prepared to join the Indian National Army?" On this the audience lifted up their arms, threw their turbans in the air and showed great pleasure. They made noise but Captain Mohan Singh ordered them to keep quiet. He said that he was very pleased to see them rejoicing but freedom could not be gained by making noise. Then he said "The British have accused the Indian Army of not putting up a good fight in Malaya, but you know what type of arms the Indian Army had, how many tanks there were, how many aircraft and which of the positions was evacuated without orders." Then he cracked a joke with a small Japanese and finished his speech.

I and my battalion remained that night in Farrar Park. On the morning of February 18, we marched to the Neeson Camp. After two or three days of our arrival in Neeson Camp, Major Fujiwara along with Capt Mohan Singh and Capt Muhammad Akram came to visit that camp. I now recognise Lieut Dhillon, the accused before the court. At the end of February or the beginning of March, Lieut Dhillon delivered a lecture to VCOs, NCOs and men of my battalion and some other people who were living in the building where we were living. He said that the INA was a very good movement and every one should join it. Lieut Dhillon was Signal Officer in my battalion. When my battalion reached Ipoh, Lieut Dhillon fell sick and was admitted into hospital. I do not know where he was when Singapore surrendered but I saw him later in Neeson Camp.

I recognise Capt Shah Nawaz Khan, the accused sitting before the court. In the month of March, when Capt Shah Nawaz Khan was commanding the

Neesoon Camp he collected all the V.C.O.s and the N.C.O.s and read to them four Bidadari resolutions from a piece of paper. He said that there was a meeting of all the officers held in the Bidadari Camp and the following four resolutions were passed. I remember two resolutions out of those four the gist of which was:

(1) We are all Indians.

(2) We should all fight to free our country.

The other two resolutions were similar but I do not remember them. Then he exhorted us to go back to our residence and read these resolutions to all the I.O.R.s.

Capt Shah Nawaz Khan arrived at Singapore on January 28, 1942, on a draft. He was commanding No. 2 Company when the Battalion was re-organised at the naval base. In the month of April Capt. Shah Nawaz Khan delivered another lecture to the officers and N.C.O.s in Neesoon Camp. I was present in that lecture. Capt. Shah Nawaz Khan in that lecture said:

This I.N.A. movement is a very good movement and I have offered myself as a volunteer but I do not order any one to volunteer.

Then he asked us to go and repeat what he had said to the I.O.R.s.

Then he said that a list of those who volunteered and also those who did not volunteer should reach the camp office by the following evening.

But no officer or N.C.O. will order or will put pressure on the I.O.R.s. to volunteer or not to volunteer for the I.N.A.

A list showing the number of volunteers and non-volunteers was prepared and was handed over in the camp office.

I attended a conference at Bangkok. I was told by Capt. M.Z. Khan in the camp office that I should attend the conference. I said that I did not know English but he said I would have to go. We did not receive any instructions during the first day of the conference, which was an open session. On the second day of the conference we received some instructions during the interval. These instructions were given by Captain Mohan Singh. He said that the military delegates should maintain discipline in the conference and should not raise any objections. If anybody had any objection he should inform him beforehand. The first resolution passed at the conference was that out of the prisoners of war and other Indians living in the Far East an Indian National Army will be raised. The second resolution was that an Indian Independence League will be formed with branches at Singapore, Malaya, Burma, Thailand, Java, Sumatra, Philippines and Japan which will collect money, clothing and recruits for the I.N.A. The next resolution was that the Indian National Army, when raised, will be under the command of Captain Mohan Singh. The next resolution was that a Council of Action will be formed, which will work as liaison between the Japanese and the Indian National Army. The next resolution was that all arms, ammunition and equipment will be supplied to the I.N.A. by the Japanese Government. Another resolution was that the price of all the arms, ammunition and equipment will be paid in cash by the would-be Indian Government. The Council of Action formed at the conference was composed of two military members and two civilian members with Mr. Rash Behari Bose as its President. The two military members were Captain Mohan Singh of the 1/14th Punjab Regiment and Lieut.-Colonel Gilani of the 1st Bahawalpur Infantry. At the end of the conference, I returned to the Bidadari Camp. My battalion was still there. Approximately 250 men of my battalion did not volunteer. They were sent to the civil aerodrome camp. They were mostly Punjabi Muslims.

Pathans and a few Dogras After I came back from the Bangkok Conference, another list of the volunteers was prepared and signed I was also one of the volunteers There were about 400 men who did not volunteer and they were also sent to the civil aerodrome They were sent to the civil aerodrome for fatigue duties. On September 1, 1942, when the I N A was officially formed, I was posted to the 1st Infantry Battalion Hind Field Force This battalion was stationed at Bidadari camp After two or three days, they started doing some P. T. and drill After a few days we received machine-guns, mortars, pistols and rifles These arms belonged to the Indian Army, which had been handed over to the Japanese at the time of surrender of Singapore The battalion was dressed in the Indian Army khaki uniform Besides that, we had an arm band on the right arm which was embroidered with the Congress Flag and the letters I N A and there were also Congress coloured badges for the Colours. When the I N A was formed, I saw Capt Sahgal who was performing the duties of the Adjutant of the Hind Field Force Group in Bidadari. Capt Sahgal was Adjutant of the battalion from September 1, 1942, to December 28, 1942, till such time when the I N A was dissolved Capt Sahgal was not performing any other duties but that of an Adjutant He was wearing the I N A badges

In the beginning of November 1942, a defence party of I N A was sent to Burma After the arrest of Capt Mohan Singh, an Administrative Committee was formed, whose duty was to look after rations and discipline Before the Committee was formed, the I N A was broken up under the order of Capt Mohan Singh because the objects for which it was formed were not capable of being fulfilled under those conditions For some time the Administrative Committee kept on looking after the rations and discipline. When lectures were started for the formation of the Second I N A, the Administrative Committee looked after the arrangements for those lectures I heard two or three lectures, two of which were delivered by Rash Behari Bose The gist of those lectures was that we should stay in the I N A and should not get out of it I left the I N A and about 200 other officers also left it These officers were sent with parties either to the islands of New Guinea or Solomons When we left the I N A on February 15, 1943, we were removed to a small bungalow in the Orchard Road, Singapore From there we were removed to the police lines at Johore Baru There were about 100 officers with me We stayed there for one month During our stay there the following I N A officers visited the place Captain Abdur Rashid Khan, Lt -Col J K Bhonsle, the accused Capt Shah Nawaz Khan, the accused Capt Sahgal and the accused Lt Dhillon These officers were wearing badges of the rank of the I N A From Johore Baru I was transferred to Seletar Camp in Singapore Some 30 or 40 officers volunteered for the I N A and left that place On May 5, 1943, we were transferred to New Guineas I stayed there for about a year and then escaped After December 1942, so long as I was in Bidadari Camp, Capt Sahgal was performing the duties of Adjutant of the Hind Field Force Group The headquarters retained the I N A badges and the rest of the prisoners of war discarded those badges I saw Lieut Dhillon in February 1942 in Neesoon Camp After December 1942, I saw Lieut Dhillon in Johore Baru police lines He used to come there amongst other I N A officers I saw Lieut Dhillon once in Bidadari Camp at the time of Rash Behari Bose's lecture at the end of January or the beginning of February 1943 He was then wearing the I N A badges Near the lecture house there was an officers' mess of my battalion Lieut Dhillon came to this officers' mess and said to the other officers that he wanted to have a talk with them I was also present there and I said "If this talk appertains to the subject of the I N A, we beg to be excused" Then Lieut, Dhillon went away,

Cross examined by Counsel for Defence

I belonged to the battalion of Capt Shah Nawaz Khan before the surrender of Singapore and when the fighting was going on. We continued to fight while other Companies commanded by British officers had left. Capt. Shah Nawaz Khan was commanding the Neesoon Camp from the beginning of March to the beginning of June 1942. In that camp there were both volunteers and non-volunteers. There was no difference in the treatment with the volunteers and non-volunteers. They lived together and had the same food. The camp had an accommodation for approximately 2 000 men. When I reached there, there were about 7 000 or 8 000 men. After that more men came in. When I reached there, there were no arrangements for water or sanitation or light. All the arrangements for water, sanitation and light were made by Capt. Shah Nawaz Khan. Later on electricity was also installed in the camp. The water arrangements were made by digging fresh wells and also by damming the water of the nullah.

Before Capt Shah Nawaz Khan took over the command of the camp the hospital arrangements were poor. But after he had taken over the charge things grew gradually better. There was no distinction between the volunteers and the non-volunteers as regards admission or treatment in the hospital. Capt. Shah Nawaz Khan and other officers donated some money for the work of the hospital and 2 500 dollars were also collected in Neesoon Camp for that purpose. I also donated 5 dollars. These 2 500 dollars were collected by Capt. Shah Nawaz Khan with the help of other officers. This money was used for the benefit of the patients in the hospital irrespective of whether any one was a volunteer or a non-volunteer. I have never heard Captain Shah Nawaz Khan telling non-volunteers to volunteer.

Q Do you remember the following resolution being passed by the Bangkok Conference?

Guiding Principles

'Resolved that the Indian Independence Movement sponsored by this Conference shall be guided by the principles indicated below

- (a) Unity Faith Sacrifice shall be the motto of the Indian Independence Movement.
- (b) That India shall be considered as one and indivisible.
- (c) That all activities of this movement be on a national basis and not on sectional communal or religious basis?

A. Yes

Q Do you also remember this resolution at the Bangkok Conference

Resolved that the Indian National Army shall be made use of only—

- (a) For operations against the British or other foreign powers in India.
- (b) for the purposes of securing and safeguarding Indian national independence, and
- (c) for such other purpose as may assist the achievement of the object, viz. the Indian independence?

A. Yes. After the arrest of Capt. Mohan Singh in December 1942 the I N A broke up. All the I N A badges and records were destroyed and we became ordinary prisoners of war again. We were sent to New Guinea under orders from the Japanese.

Cross-examination by Judge Advocate

I know Lt. Col. Hunt to be the staff officer of General Percival. When I saw him at the meeting in Farrar Park he was not wearing any arm band.

I saw Lt-Col Hunt leaving the microphone I do not know where he went I did not see the accused there.

I volunteered myself because the movement was for the freedom of India. When the Japanese wanted to use the first I N A as a fifth column to assist the attack on India, differences arose between Capt Mohan Singh and the Japanese, with the result that the I. N. A was dissolved. I refused to volunteer in the second I N A because I thought that the Japanese will try to again use the I N A as a fifth column for their own purposes.

At 10 a m on November 23, 1945, when the court reassembled Capt G H Niazi, R I A S C, was sworn in as interpreter.

Jemadar Iltaf Razak, 43 Field Park Company, Bengal Sappers and Miners, examined by the Prosecutor through the interpreter, stated

I was enlisted in the Indian Army in 1922. I was in Kaula Lumpur (Malaya). I was in 43 Field Park Company, Bengal Sappers and Miners, and fought against the Japanese at Sangapatani in Malaya. I was taken prisoner of war in Singapore. On the first day we were taken to Fariar Park. After that we went to Bidadari Camp and then we went to Karachi Camp. We were then sent to Tinghal aerodrome and then to Tyersall Park. Then we were sent to Kula Lipis Camp. Then from there we were taken to Port Dixon, I remained there approximately for a year. Capt Shah Nawaz came to Port Dixon either in January or in February, 1943. He collected all the Indian officers who were prisoners of war there and delivered a lecture. He was wearing the badge of a Lieut-Colonel of the I N A. I was present at that lecture. Capt Shah Nawaz told us that the National Army of Mohan Singh had been dissolved and they were going to raise another army. Then he said that whosoever voluntarily wanted to give his name for the freedom of India could do so and that his name would be sent to I N A Headquarters at Singapore through the Camp Commandant. Seeing the condition of the camp he said that the camp was in a very bad condition and the result was that all the men were getting sick and that condition would continue among the prisoners of war. The conditions were that all the men were suffering from malaria, they used to sleep on the ground under thatched roofs and arrangements for rations, clothing and medicines were not satisfactory. Further he said "If you join the I N A all these troubles will be solved." Nobody volunteered to join the I N A at that time.

On November 17, 1943, I volunteered to join the I N A. One reason was that our conditions were going from bad to worse. And the Japanese had told us that the prisoners in Chuar Camp had gone sick and these sick prisoners were coming to my camp. There were the two reasons why I volunteered for the I N A. The majority of the 2/9th Jat Regiment people volunteered. They were 350 in all and I was one of them. From there we were taken to Singapore. I was posted to No 5 Guerilla Regiment in Bidadari Camp which was under training. The regiment was there till April, 1944. Then we were taken to a place called Ipoh in Upper Malaya. There also the regiment was under training up to August, 1944. Then we were brought to Champian. From there the regiment moved to Mingaladon near Rangoon. It arrived there in January 1945. The Commanding Officer of that regiment was Lt-Col P K Sahgal. I recognise him as the accused before the court. He was wearing the badges of Lt-Colonel of the I N A. I was at that time a Lieutenant of the I N A.

I was present at a conference of all officers which was summoned by Capt P K Sahgal. At the conference he told us that our brigade was about to move forward and that he wanted perfect discipline. Our regiment was about to move to a place called Popa Hill in Kyauk Padaung area. We had three battalions in

the regiment at that time. In addition to those there was an SS Company a Signal Platoon and a regiment headquarters. There were approximately 650 men in each battalion. There were five companies in each battalion. The majority of the men had Mark III rifles, and the biggest weapon was the 3 inch mortar. Before reaching Mingaladon our regiment was named 5 Guerilla regiment and after that it was called the 2nd Infantry Regiment. Subhas Chandra Bose inspected the regiment before it moved. Captain P. K. Sahgal was there at that time. In the first instance the brigade gave a salute to Subhas Chandra Bose and he inspected the regiment. Then he went near the saluting base where the tri-colour flag was flying. He then made a speech in the course of which he said 'I am aware that you people have reached this place after a long march under hard conditions and now you have to go forward. You will put up a good show just as the I.N.A. did last year. Last year there were instances of desertion which should not happen this time. Whosoever does not consider himself fit to go to the front line can stay back.'

From Mingaladon the regiment moved in the third week of January 1945. I went with No. 1 Company, No. 1 Battalion with four men from brigade H.Q. as an advance party. We reached Prome. From there the Company marched and I with four men reached Popa in a truck. I arrived in Popa on February 2, 1945. Capt. Sahgal reached there on February 15, 1945. He asked me where Major Dhillon was living. I took him to Major Dhillon at Popa. Lieut. Dhillon had arrived in Popa the day before. I saw him in a hut where he was living and there was no one else except Lieut. Dhillon. Three hundred men from the Nehru Regiment which was also called 4 Guerilla arrived in Popa area in small parties. There was no Commander with them, they came of their own free will in small batches. Lieut. Dhillon was Commander of these 300 men who had come back in small parties to Popa area. These men were in a bad way. Some were without beddings, others were without rifles and also some were without equipment.

On February 25, 1945, a conference was called of the officers of the 2nd Infantry Regiment and the staff officers of regimental headquarters attended it. The conference was called by Lt.-Col. P. K. Sahgal. I was present there. He said that he was ashamed to see No. 4 Guerilla Regiment in such a condition and that he did not want to see the same thing in his regiment and whosoever was suspected of desertion would be sent to regimental headquarters.

Another conference was called by Lt.-Col. Sahgal on March 1, 1945. All officers of the No. 2 Division who had arrived in small parties attended this conference. Major Dhillon was present. Capt. Sahgal said that five officers of No. 2 Divn. Headquarters who went on night reconnaissance in No. 1 Battalion area had deserted their orderlies. He had sent a Patrol to capture them. He said that in future whosoever does this will be shot. He said that any rank in the Regiment on seeing a person deserting could shoot him.

On March 10, 1945, 70 to 72 Japanese anti-tank mines arrived. I asked for instructions from Col. Sahgal regarding them. He told me to ask the Japanese for instructions in their use. I received instructions from the Japanese and under the orders of Lt.-Col. Sahgal I passed on the instructions to the Sapper Havildar of No. 1 Battalion and I gave him 16 anti-tank mines.

Another conference was called by Lt.-Col. Sahgal on March 20, 1945. At the conference he said that with the exception of the S.S. Company our Regiment had arrived at Popa. Now either we will attack or we will be attacked by the Allies. If we are attacked by the enemy and if there is any penetration on one Battalion front the other two Battalions will stand fast. The reason he gave us was that if we left Popa area there would be no more water for about 15 to 20 miles. Then he gave orders to Capt. Banta Singh commanding No. 2 Battalion that his Battalion should move to Kyauk Padaung. No. 2

Battalion then left Capt Sahgal went with No 2 Battalion I with four other men escaped. We joined the British at Nyanngu area The nearest British Troops to Popa were at Pinyin area Pinyin is approximately 15 to 20 miles away

Capt Shah Nawaz Khan was the Divisional Commander at that time No. 2 Div had three Regiments named No 1 Infantry, No 2 Infantry and No 4 Guerilla The Ancillary Units with the Div consisted of M T, Hospital, Supplies, Engineering Company, etc, and smaller units which I do not remember After the desertion of five officers from Div Headquarters Capt P K Sahgal was officiating Commander of No 2 Division for about a week

I saw Lt Dhillon in November 1943 when I was posted to 5 Guerilla Regiment in Singapore He was Second in Command in 5 Guerilla Regiment He was a Major in the I N A and wore the badges of rank He was responsible for the training and discipline of the Regiment At that time there were two cadres in the Regiment, one for junior officers and the other for N C O s These cadres were run in February and March 1944 Lt Dhillon left the Regiment in Ipoh about June 1944 I next saw him at Popa. He was collecting the men of his brigade On March 5, 1945, Lt Dhillon left Popa for Kyauk Padaung area.

Cross-examined by Counsel for Defence

Prior to my arrival at Port Dixon I was at Kula Lipis At that time I was in the custody of the Japanese The bad conditions I have described were due to the Japanese In January or February 1943 I saw Captain Shah Nawaz Khan for the first time when he came to collect volunteers I am quite clear that Capt Shah Nawaz Khan left it open to everybody to join the I N A or not as they chose I remember clearly that he wanted staunch men who were prepared to lay down their lives for the freedom of India I never saw Capt Shah Nawaz Khan after that lecture Eight months after this lecture I selected to join the I N A The majority of the people in the Company decided that they would prefer to die for the liberation of India rather than remain in such conditions Capt, Shah Nawaz Khan had told us in his lecture that the first I N A had been dissolved by Capt Mohan Singh I do not remember anything else about what we were told I know Capt Rab Nawaz He was the Commander of one of the POWs camps at Port Dixon and the other camp was commanded by Capt Karam Chand Bias of the First Bahawalpur Infantry Capt Rab Nawaz did not volunteer for the I N A nor did Capt Bias After Capt Sahgal's conference on March 1, within the next two weeks, there were several people arrested After investigation, all were released except Capt Bedi The reason for my remembering the date on which Capt Sahgal commanded No 2 Division was that on February 28, 1945, five officers deserted and on that occasion Capt Sahgal arrested Captain Bedi Captain Sahgal arrested Captain Bedi as a Divisional Commander I am certain that Capt Sahgal did not command the division for more than about a week because Capt Shah Nawaz came back quickly

By the Court When Subhas Chandra Bose inspected the Regiment, he said that if anybody did not want to go he could stay behind but nobody stayed behind

P W 6 Naik Santokh Singh, No 1 Depot, Indian Signal Corps, being duly sworn in and examined through the interpreter, stated. I joined the Indian Army in May 1936 When the war broke out with Japan, I was a Naik I was serving at that time in Kuantan in Malaya On January 31, 1942, I was taken prisoner of war near Johore Baru by the Japanese.

After I was taken prisoner of war, I was taken to Kuala Lumpur. Then I was sent to Singapore. I reached Singapore in June 1942. I joined the I.N.A. in September 1942. I was posted to No 1 Signal Company, Hind Field Force Group I.N.A. In December 1942, the crisis began and the first I.N.A. was broken up. In January 1943, one day after the games, Capt. Sahgal came. All the men of No 1 Signal Company were present there. At that time Capt. Sahgal was dressed in sports dress. He told us that the I.N.A. which was going to be formed would be the new Indian National Army and every Indian should join it. He said 'I suggest that you should all join this Indian National Army. I do not bring any pressure to bear on any one to join the I.N.A. After this he left. I did not volunteer to join the I.N.A. on that occasion. After this I was sent to Seletar Camp. Then I was taken to New Guinea by the Japanese. I saw Capt. Shah Nawaz Khan in Seletar Camp in Singapore in April 1943. That camp was for non-volunteers. They were men who had already resigned from the first I.N.A. That particular moment all the men in the camp had been collected and Capt. Shah Nawaz Khan gave a lecture. He said that it was the duty of every Indian to join the new I.N.A. for the freedom of India and he also gave an example that when Guru Govind Singh founded the Sikh religion only five volunteers came forward. He said 'Now I need five brave men as brave as those five whom Guru Govind Singh asked for. They should volunteer without hesitation and should stand under the Indian National flag. I do not remember if he said anything else. At that particular moment nobody volunteered. A few days later a few men did volunteer to join the I.N.A.

Lieut. Ghafur Ullah I.A.O.C. was duly sworn in as interpreter. Lance Naik Gangaram Newar, 2/1 Gurkha Rifles, examined by Counsel for the Prosecution through the interpreter stated

I joined the Indian Army in 1933. I went with my battalion to Malaya in the war against the Japanese in August 1941. My battalion fought against the Japanese for the last time at Slim river. I was taken prisoner of war by the Japanese in February 1942 at Penang. After being taken prisoner I was taken to Ipoh and from there to Port Swettenham. I went to Port Swettenham either in September or October 1942. I recognise Capt. Shah Nawaz Khan as accused before the court. I saw him in Port Swettenham at the end of April or the beginning of May 1943. He came there to deliver a lecture to the prisoners of war in the camp. I was present there. He said 'We are Indians, India is ours and we have to set India free. The Englishmen who are there in India have to be driven out. You people will get a chance very shortly and you will be sent to the front from Singapore. What money you will get now is pocket money and you will get pay when India is set free. Good ration and clothing will also be given. Those who volunteer should give their names to the Camp Commandant and they will be sent to Singapore. No one volunteered.

Cross-examination by Counsel for Defence

The Camp Commandant at Port Swettenham was Capt. Chopra. I do not know whether he joined the I.N.A.

Subedar Asaf Noor Khan I.E.M.E. examined by Counsel for the Prosecution through the interpreter stated

I joined the Indian Army in 1913. In 1941 I was in the 28th Indian Infantry Brigade L.A.D. I went to Malaya with my Unit. I was in Singapore when it fell, I was made a prisoner of war. For some time I was kept in Singapore after which I was taken to Penang. At Singapore I was in Necsoon Camp.

When I was at Neesoon camp at the end of February or beginning of March 1942, Lt Dhillon delivered lecture on the religion of Japan. He said that the leader of the Japanese religion, Buddha, was born in India, that the Japanese religion was the oldest religion in the world and it was a good religion. For this reason we should co-operate with them. I did not meet Lt. Dhillon after that.

I first met Capt Sahgal at Bidadari Camp in August 1942. He was a Commander of a Unit of the I N A in Bidadari Camp. I was ordered to take two men from his Unit for Col Gillani's party. In this connection I went to Capt Sahgal. I talked to him about those two persons. Col Gillani was making a party out of those prisoners who were going to Penang for secret service training.

I saw Capt Sahgal some time later. When Col Gillani's party for secret service work failed in Penang, it was ordered to proceed to Singapore. I was still with the party. After that when we went from Penang to Singapore we were accommodated in Neesoon Camp. Sometime later Capt Sahgal sent for me to his office, at that time he was a Major in the I N A and was working as Military Secretary. In the first meeting he inquired from me about Col Gillani's party, and I told him all I knew. The second was when Subhas Chandra Bose came back from Tokyo and I was called to see him with Subhas Chandra Bose. I discussed fully the details of Lieut-Colonel Gillani's party, and decided who was to remain and who was to be taken out. Subhas Chandra Bose told me to go to Capt Sahgal in order to decide the final details. I discussed fully with Subhas Chandra Bose about promotions and the size of the party. The third time I only met Capt Sahgal casually. It was not a pre-arranged meeting.

In the beginning of January 1944, I along with 19 other men from Col Gillani's party left Singapore for Penang. In Penang the Japanese gave us final training about secret service, propaganda, sabotage and wireless, and on February 27, 1944, the Japanese sent twelve men including myself in a submarine to India. After 17 days in the submarine the Japanese tried to land us but failed, after a week, towards the end of March, we landed in India. About four miles from the coast there was an official of the Kalat State to whom we reported, and I reported myself to the British authorities.

Cross-examined by Counsel for Defence

In Lieut Dhillon's lecture he said that as Buddha was born in India, we should join hands with the Japanese to free India from the people who were holding it now.

P W 8 Havildar Sucha Singh, 7/8th Punjab Regiment, examined by Counsel for the Prosecution through the Interpreter, stated

I joined the Indian Army on January 15, 1933. I went to Malaya in the war against Japanese. I was in Singapore when it fell. I was taken to Jitra. Lieut Dhillon came to Jitra once when I was there. He was wearing Khaki uniform with badges of a Major of the I N A. He was accompanied by Major Dhara. I do not know what post Major Dhara was holding but he delivered a lecture there. He said that the I N A has already been started in Singapore and a good many people have joined it and the I N A will only fight for the freedom of India and for no other cause. If we go to India and the Japanese go with us, we are equipped with arms and we will fight the Japanese, if they turn round against us. This is a golden chance for us and we may not get such a chance again. After him, Major Dhillon spoke. He said that whatever Major Dhara said, "was correct and this army will be only made to fight for the freedom of India

and for nothing else and in this cause the Japanese will help us. He further said we are ready to fight any other nation that stands between us and our cause. I joined the I.N.A. a month later because as a prisoner of war I was not getting good accommodation or good food and as many others were coming in the I.N.A. After I joined the I.N.A., I was taken to Singapore. I was attached to the Nehru Regiment as platoon havildar. I was made a sub-officer after that in C Company of No 1 Battalion. At the end of February 1944, we moved to Burma. First of all our Unit went to Rangoon. From Rangoon the unit went to Mandalay and from Mandalay to Myingyan. Major Mahboob was the commanding officer of that regiment. Major Dhillon took over from him later. I do not know the exact date on which Major Dhillon took over but approximately it was the end of November 1944.

I saw Major Dhillon about a week after he had taken over command. In November 1944, I was commanding No 4 Platoon of B Company. In the second week of February 1945 my unit moved to Nyaungu. There we were posted in a defence position on the Irrawaddy river. We had no fighting there. On our right flank on February 14 1945 there was heavy firing by cannon mortar and by aeroplanes. After that Lieut. Hari Ram came and planted the white flag and collected us together. Eighty-four men surrendered to the British and I was one of them.

Cross-examination by Counsel for Defence

One Capt Jaya Singh and a Lance-Naik of the Japanese commanded the Jitra Camp. Capt Rab Nawaz was in the Jitra Camp before I was there but he was not there with me. During the time I was there he was there but I did not see him. When I was in the Camp Capt Rab Nawaz was the Commandant. I accepted what Major Dhara, had said as correct as the object for joining the I.N.A. I remember a summary of evidence being taken.

Q Do you remember Q No 57 in your summary of evidence.

A Yes, I answered

If we did not join the I.N.A. we were afraid that we would be put to fatigues by the Japanese and will be given bad food. I joined the I.N.A. knowing that the object of fighting was the freedom of India and we were to fight any nation that was in its way including the Japanese.

Sepoy Kaka Singh 6/1 Punjab Regiment examined by Counsel for the Prosecution through the Interpreter stated

I joined the Indian Army in February 1940. I went to Malaya with my unit during the war against the Japanese. I was in Neeson Camp in Singapore when it fell. I was made a prisoner of war. I was kept in different P.O.W. Camps. I joined the I.N.A. after a long time. I was in Taiping. I saw Lieut. Dhillon in Taiping in March 1943 delivering a lecture to the prisoners of war there who had not joined the I.N.A. I was present at the lecture. He said that he had come there for the reason that the I.N.A. had been started that he had already delivered lecture, in Singapore and Jitra and that the men there had already joined the I.N.A. and that we should also join it. If we did not join the I.N.A. we would get into trouble. They would drive the English out of India. We should not fear as it was the responsibility of the officers and we people would not be put to trouble if the I.N.A. failed.

Cross examined by Counsel for Defence

Taiping Camp was under the command of Japanese Commander Lieut. Dhillon told us that the I.N.A. was being formed to fight for the freedom of India. I knew that when I joined the I.N.A. I had to work as one of its members,

meaning fighting for the freedom of India. Lieut Dhillon said that if we did not join the I N A we would remain under the command of the Japanese commanders. I was told by Lieut Dhillon that if I did not join the I N A I would get into trouble, but I did not understand what the trouble was.

Jemadar Mohd Nawaz, 5/2 Punjab Regiment, examined by Counsel for the Prosecution through the interpreter stated

At this point Counsel for Defence makes a submission as follows

Mr Desai The court was pleased to rule that evidence of harassment or torture would be admitted. But the period during which such acts took place was, as far as I recollect, not specified in the ruling. Having read this present witness' summary of evidence, I find that the allegation of torture belongs to the period of the existence of the first I N A, which was dissolved on Capt Mohan Singh's arrest, and it has no reference, direct or indirect, to any of the accused. So I merely want to have that cleared.

Sir Noshirwan Engineer It is correct that the evidence, which this witness is going to depose to, refers to incidents before December 1942, but I submit they are relevant all the same. The court decided to admit evidence of atrocities and hardships from May 1, 1942.

Jemadar Ahmed Nawaz stated

I enlisted in the Indian Army on October 21, 1930. At the end of 1941 I became a Jemadar. I went with my battalion from India to Malaya in August 1939. I fought against the Japanese in the war. I was taken prisoner of war in the Slim river in Malaya between 11th and 14th January 1942. Nearly the whole of my battalion was taken prisoner. After that I was taken to Kuala Lumpur. Of the people taken prisoners some were taken to Ipoh and others to Kuala Lumpur. On June 7, 1942, I was taken to Singapore where I was kept in Tyersel Park. There were with me 52 men of my unit. At that time I was ordered to make out a list of the prisoners of war who were volunteers and those who were not volunteers. Of my battalion there were only four men who became volunteers at Kuala Lumpur and came to Singapore. On June 29, those of us who were not volunteers were sent to Tengah aerodrome. At the end of July we were taken from there to Seletar Camp. From there in August we were transferred to Buller Camp. On September 13, V C O's and one Havildar clerk were taken to a concentration camp. Subedar Major Hari Singh, 2nd Gurkha Rifles, was also taken with us. When we reached the concentration camp we were fallen in and some soldiers were ordered to search us. They took away everything that we had, such as paper, watches, pens, whistles, etc. After that we were taken to a tent which was surrounded by barbed wire and guarded by an armed sentry. At about 11 at night a sentry came and called my name. Then they took me to another place. I was told that as we were undergoing troubles and we were educated people it was better for us to volunteer for the I N A. I was told further that there were lots of complaints against me which had reached the Supreme H Q, that when at Kuala Lumpur and at Singapore I had told the Mussalmans not to join the I N A. So they advised me to join the I N A as otherwise I was in danger of losing my life. I said I did not care about that, and I did not agree to join the I N A. Then I was told that I would feel the consequences of my refusal on the next day. The following day all the prisoners there were fallen in, they were people who had refused to join the I N A. Besides myself there were approximately 200 to 250 men fallen in. Those of us who were V C O's were fallen in separately. Then three soldiers came and ordered us to double march. No sooner had we started to double march than they started beating us with lathis which they had in their hands while they

were also running along with us. Then they took us to a place where they gave us a sack and a bamboo to carry between each two of us. As we were nine the ninth man was given a tin in which he was told to carry what he was given. Then they took us outside the concentration camp where there was a dung heap and we were ordered to fill the sacks with the dung and carry them. When we took up the sacks and started walking we were ordered again to double march. The place where we had to empty these sacks was about 300 yards away inside the Concentration Camp. Three sepoy who had gone with us for the first three trips beating us then got tired and they stopped at different places on the way. After that whenever we passed them they beat us and if any one wanted to pass quickly without being beaten they cautioned him to stop and gave him an order "On the hands down" and then beat him.

On the way there were two armed sentries, whom we had to salute before passing. About three hours later when the cow dung was completely removed we were taken to the spot where the cow dung was accumulated. Then an officer said "Stop beating these people now. After that we were ordered to mix up cow dung with earth and ashes, where Subedar Major Hari Singh was already doing this job. We started approximately at 8 a.m. and finished at 6 p.m. with a rest of an hour in between. The people who beat us were a Lance Naik and two sepoy of the Indian Army. The Lance Naik belonged to H.K.S.R.A. Unit. One sepoy belonged to the Signal Corps, the other Sepoy belonged to the 12 Frontier Force. They belonged to the Indian National Army because they were wearing badges of the Indian National Army. All the people in the camp could see what was going on. There was a roll call every evening. We were told the first evening that if anybody reported sick and the doctor said he was not sick, he would be given 12 strokes by cane. There was a sub-officer of the I.N.A. who used to give us a lecture every evening there and it was the same man who told us this. One day a man was told to come forward and an order was given to give him 12 strokes because he had reported sick and the doctor said he was not sick. He was ordered to go down on his hand and knees. After receiving six strokes he became unconscious and the punishment was stopped.

One day, when we were doing fatigues we heard somebody crying. When we looked in that direction we saw that at about 60 yards away a man clad in khaki uniform whose hands were tied to a stock and his feet to iron pegs from behind two sepoy were beating him. When he made more noise the officer shouted from afar to the sepoy to stop beating him. He shouted "Stop you do not know how to beat properly." When the officer reached the spot he told the Sepoy to gag the man and the sepoy did so. Then he took a lathi from one of the sepoy, beat the man twice, and said "This is the way to do it." The sentry who was over us when we were all looking in that direction then took us away. The sentry over us had a lathi in his hand and whenever we slackened he used to beat us.

At the roll call every evening we were told that we were foolish people because the Japanese had promised that they would hand over India to Indians after conquering it. We remained in that camp for six days and not a single man volunteered for the I.N.A.

The food that we got was a small quantity of rice mixed up with insects and small stones, and a little boiled vegetable curry with a little salt in it. I remained in that camp for six days. From there we were taken to a Separation Camp. When we reached there we found that there were several L.C.Os, V.C.Os, and K.C.Os already there. Very many Indian National Army officers used to come there, but only two of them talked with us. I never joined the I.N.A.

Cross-examined by Counsel for Defence

On September 13, we were taken to a Concentration Camp. It was a separate place in which there were many partitions. Those who did not volunteer and asked others not to volunteer included Lt. Purihotamdas, Sub. Ahmed Khan (1), Sub. Ahmed Khan (2), Jem Sarwar Khan, Jem Fakir Mohd, Jem. Gulam Mohd, Jem Mohd Sharif, Jem Alla Bux, Jem Sher Mohd, Sub. Sher Mohd, Sub. Maj. Hari Singh, Hav. Mohd Khan (1), Hav. Mohd Khan (2) and Hav. Chanan Shah.

Subedar Major Ahmed Khan was arrested on September 13. I do not know for what. He was taken to the Concentration Camp, but I do not know on what charge. The thirteen men I have named were not guilty of any offence or of indiscipline. I had no special friendship with Subedar Major Ahmed Khan. I know Capt. Arshad. Subedar Ahmed Khan was released when all the other men in the Separation Camp were released. When I went from the Concentration Camp to the Separation Camp, Subedar Ahmed Khan was still in the Separation Camp. After that he fell sick and he was brought to the hospital which was near our Separation Camp. I do not know whether Subedar Ahmed Khan was charged with any offence. He was in a separate tent and I had no permission to see him. I do not know how many men were in Subedar Ahmed Khan's tent, because I never went there. There was another line of tents intervening between my tent and the tent in which Subedar Ahmed Khan was. Only when we were on fatigue and when we were on the evening roll call we came to know how many people were with us. Subedar Ahmed Khan was with me. Subedar Ahmed Khan I used to do fatigues separately from us. Both belonged to 5/2 Punjab Regiment. There was a garden in which vegetables were cultivated and the prisoners were made to work there. I do not know what the cow dung was taken for. I only know we were made to take it as a punishment. We stacked the cow dung near a road in the camp, and on both sides of the road was the garden. It is correct that I said that we mixed ash with the cow dung, but I do not know for what purpose it was used. I only did it as a punishment. As a farmer, in our own home we only use cow dung as a manure and we do not mix ash with it.

Only for three hours on the first day I did this work of carrying cow dung and stacking it near the garden. It was stacked at a distance of about 10 or 12 yards from the garden, for the remaining five days we were digging and levelling earth and preparing garden plots. Whatever they told us we carried out. There was no reason for our being beaten the first day. On the other days we were only given beating when we were tired and could not work any more. Nine V.C.Os. were working together. On the right and left we could see everybody who was working.

Havildar Mohammed Sarwar, 7/22 Mountain Regiment, Royal Indian Artillery, examined by the Prosecution through the interpreter, stated

I enlisted in the Indian army on November 2, 1932. I went to Malaya with my unit in August 1939. I was in Jitra at the time when the war with Japan broke out. I was in hospital at Singapore in February 1942. When I left the hospital, I was taken to my Unit in Bidar Camp. From there I was taken to Seletar. From there I was taken to Kranji. There were other Punjabi Mussalmans also there numbering about 300 of my Unit but I do not know the total number. There was a Jemadar and a Subedar who had a guard with them. They went to our place and ordered the Havildar to fall in the men and all the guards were Sikhs. The Jemadar delivered a lecture. He said "You should join the INA." All of us, including our Maulvi, refused to join the INA. Then he said "those who want to join the INA fall in

on one side and those who do not want to join the I.N.A. fall in on the other side. Everybody refused to join the I.N.A. The Jemadar and Subedar were armed with pistols and they took them out and started firing on us and ordered the guard also to fire on us. The guards consisted of approximately 14 men. They started firing. Two of us were killed. They were Lance Naik Mohammed Alam and Gunner Alla Ditta. On seeing them dying Lance Naik Mohammed Hanif cried out *Lara Takbir* and everybody replied *Allah-o-Akbar*. On this cry, the guard continued firing and many of us were wounded. Then one of the guards who was firing was hit on the head with a spade and he fell dead on the spot. His head was split open. For 15 minutes they continued firing and when the ammunition was finished they picked up their dead put them in the lorries and drove off. After they had gone, some of the Japanese officers accompanied by I.N.A. officers came and they had a Japanese guard with them. Amongst them was a Colonel from the Kapurthala Regiment. He was in I.N.A. uniform. The Colonel acted as an interpreter and we were told by the Japanese officer that if we continued behaving like this we would all be killed. The Japanese officer told us if you kill one I.N.A. man we will kill hundreds of you in return. After that a lorry came and took away the havildars. The rest of the regiment marched from there to Bidadari Camp. Before the march the havildar in charge told us that none of us should join the I.N.A. whatever happened. We were taken to the Concentration Camp. When we arrived at the Concentration Camp the same Jemadar Subedar and the Guard were there. We were treated very badly. We were beaten with canes. I was also beaten with canes. There were seven other havildars who were so much beaten that they were incapacitated. I was rendered unconscious by the beating and taken to hospital. I was laid flat on the ground and beaten. I am giving the names of certain havildars who were incapacitated through beating. They were very badly beaten. They were Havildar Jalal Shah, Havildar Nur Khan, Havildar Mohammed Sarwar, Naik Mohammed Hanif, Gunner Karam Sher, Naik Syed Mohammed and there were many others besides. I was then taken to hospital. I remained in hospital for approximately three weeks. When I was discharged from hospital I was taken to Kranji camp. After that I joined the I.N.A. because of these troubles. I wanted to escape him and also I was getting no food or medicine. I made up my mind that when I was detailed to the front I will desert.

Cross-examined by Counsel for Defence

I was for three weeks in No 4 hospital. It was a very big hospital. There were patients of all kinds there. I do not know who took me because I was unconscious. There was a doctor with the rank of Major who treated me. I was treated well. I was taken to Kranji Camp after leaving the hospital.

There was an officer to whom I said that I was willing to join the I.N.A. The only force that made me to join the I.N.A. was that I wanted to escape this bad treatment and bad food. When I joined the I.N.A. I came to know that they were trying to free India. I knew I was expected to go and fight, I knew it was a question of life and death. I thought that death was better than these troubles. I had no faith that they would set India free. I had every faith that if I went to the front, I might be able to go to the other side, because we had so many hardships otherwise.

At the place where we were first, there were numerous other people besides the 300. I do not know the Camp Commander's name. The Unfi Commander was Lt. Purshotam Das. That was the Japanese Prisoners-of-war Camp. We were split up into parties for the purpose of fagues. I do not know anything about being asked to surrender our leaders. I never heard

of it. It is not true that Lt Purshotam Das advised us not to resist. In the party which came to the camp there was one Mohammedan Jemadar. He was second-in-command of the Guard. There was a scuffle between the men of my unit and the Guard after the firing had taken place. Only one man of the Guard was killed. The Guard consisted of about 300. The name of the Guard who was killed was Sardara Singh, who belonged to the Kapurthala Regiment. There was no other member of the Guard who died before Sardara Singh was killed. Two of our men were killed and three wounded. They fired upon us because we refused to join the I N A. There was no conversation between the Guard and our men and they started firing. We were asked to fall in and they asked us to join the I N A. When we refused, they started firing. Lt Puishotam Das was not there. A Subedar and a Jemadar of the Guard asked us to join the I N A. I do not know anything about the Guard having come to arrest our leaders.

Re-examined by Counsel for the Prosecution

When the Guard opened fire on us, we had no weapons. The Guard had rifles with them and the V C Os were armed with pistols. We tried to reach the Subedar and the Jemadar. They were retreating and firing because their ammunition was getting exhausted. For 15 minutes they continued firing and when their ammunition was exhausted, they got into the lorries and drove away.

November 26, 1945

No 8528 Jemadar Mohammed Hayat, 1/4 Bahawalpur Infantry being duly sworn in is examined by Counsel for the Prosecution through the interpreter.

I enlisted in the Indian army on December 24, 1924. I went with my Unit to Malaya in March 1941. I took part in the war against the Japanese and was taken prisoner on February 15, 1942, after the fall of Singapore. After being taken prisoner I was kept in Neesoon Camp. Lectures were being delivered when I was there. Among those who delivered lectures were Capt Shah Nawaz and Lieut Dhillon, accused before the court. The Mussalmans of my battalion did not join the I N A. The Hindus and Sikhs of the battalion joined it, and a few Muslims also. I was ordered to join the I N A but I refused. I was of the idea that we should not join the I N A. I always told my officers and my soldiers that we should not join the I N A and I always carried on propaganda against the I N A. In July 1942, my unit was at Bidadari camp. There also I had the same attitude, namely, that we should not join the I N A and I told others not to join it. After that an order was given that all mohammedans should fall in and we were told that we were being taken to a concentration camp. Only those men were taken to the Concentration Camp who had refused to join the I N A. I was taken to the Concentration Camp in the month of July with four or five hundred men. When we were taken to the Concentration Camp the Commandant was a Subedar. We were ordered to open all our belongings because a search was going to be made. After that they confiscated all our goods. Then they ordered us to take off our Indian Army badges. After the badges were taken off the officers, N C Os and sepoy were fallen in separately, and all the three parties were taken to separate places. They were imprisoned in separate cages. These cages consisted of barbed wire enclosures. Among the prisoners there were four I C Os and 12 V C Os. I was kept in the N C O's enclosure. At that time I was Havildar Major of my battalion in the Indian army.

On the following morning one Subedar, two Jemadars and one Havildar, six or seven sepoy and one sweeper came to our camp and took 12 of our men from the cages and placed them in a separate group. I was one of these twelve.

We were ordered to lie flat on the ground. The Subedar's party had sticks five feet long and two inches thick and they commenced beating us. I was personally beaten by the sweeper. When the sweeper started beating me and he had given me about 20 to 25 strokes I became unconscious. I do not know what happened after that. Shortly after I was told to prepare for a fatigue. Then we were given a sack, some string and bamboo pole each between two men. We were taken to a place where we were ordered to fill the sacks. After that we had to pass the bamboo through the sack and had to carry it on our shoulders. After lifting the sack we were ordered to double march to a place about 300 yards away and after emptying the sacks to double back again. We did that. On the way at every two yards there was a sentry with a stick who used to beat anybody who did not double fast enough. If anybody fell on his way while doubling he was beaten on the ground until he got up and started doubling again. Like this we were made to work the whole day except for a short rest for meals at about 12 o'clock. I was also beaten while doing this fatigue. I saw others being beaten. At that time there were about 60 or 70 people in the Concentration Camp.

After this fatigue we were not allowed to sleep at night time. At night the prisoners in the cages were put on sentry duty. Outside the cage there was an I.N.A. sentry on duty. After every five minutes that sentry called for a report from each of the sentries within the enclosure. The I.N.A. sentry used to beat the enclosure sentry if he replied too loudly or too softly. We were made to do fatigues in addition. We were made to salute every member of the I.N.A. including sweepers. If we did not salute we were beaten. One day I passed a sentry whom I did not notice. He called me back and felled me to the ground by beating with the butt of his rifle.

Our food consisted of a little rice mixed with grovel. We did not get enough water to drink and what we got was at fixed times. All the people continued working in that camp. When we found that stones were mixed up with the rice we reported the matter to the Camp Commandant. He told us that we would continue receiving this type of food. Then I told him to shoot me as I could not put up with these troubles. He replied that I would not be shot but that I should volunteer for the I.N.A. He said that if we volunteered we would be taken out of the Concentration Camp and all good things given to us. He added that if we did not volunteer we would continue to be beaten like this until we died. I saw very many people being beaten. My party of 12 people remained in the Concentration Camp for 17 days. Whilst at the Concentration Camp when we reported sick to the I.N.A. doctor he marked the sick report A or B. He never marked it C. In the evening, on roll-call those who were marked A or B were called forward and each was given 12 strokes.

After leaving the Concentration Camp we were taken to Seletar Camp. There we were repeatedly given lectures urging us to join the I.N.A. I did not join the I.N.A. myself and carried on propaganda against it. The Camp Commandant sent for us and told us to join the I.N.A. As replied that we would not do so. Then we were put in a Barrack which was enclosed with barbed wire, and after that sent back to the Concentration Camp. We were in Seletar Camp for approximately 15 or 20 days.

When we were taken back to the Concentration Camp we were again put in the enclosures. The same 11 men were with me. We were given the same treatment as before. Every day we were given lectures to join the I.N.A. On the following morning the Camp Commandant, a Captain, came to us and told us that we should volunteer otherwise we would get the same treatment. We replied that we would not do so. We were given the same fatigue as before that is,

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filling up sacks with earth. This time we were in the Concentration Camp for 21 days. During this period we were not keeping good health. No medical treatment was given to us. We were beaten. One day the sentry gave me and another companion eighteen strokes each for asking water. When they beat us we used to invoke the aid of God and His Prophet and they used to say the Prophet and God are not in these enclosures. They further said "If there is a God, he is outside these enclosures; inside the enclosure, the Concentration Camp authorities rule."

After 21 days in the Concentration Camp we were sent to Seletar Camp. There were two separate portions there—one called D portion and the other D 1. Volunteers were kept in D portion and the non-volunteers in the D 1 portion. I was taken to the D 1 camp and from there to the hospital. I was in hospital for 7 or 8 days. In the hospital volunteers and non-volunteers were kept separate. Some fruits used to come from the supreme headquarters and it was given only to the volunteers. From the hospital I was again taken to the Seletar Camp.

Back in Seletar Camp I was again told to join the I.N.A. I and my party again said we would not join and we were kept in the D 1 camp for about one month. There the volunteers and the non-volunteers were strictly segregated. From there about 2,500 or 3,000 of us were sent to the Buller Camp. When they took us to the Buller Camp we still refused to join the I.N.A. We were being lectured there to join the I.N.A. and when we did not join, we were sent back to the Concentration Camp again, and we received the same treatment here as before. One night when I was on duty at 9 o'clock, I saw two Sikhs close by being beaten. A Subedar with five or six others started beating them and they continued beating them till about 1 a.m. After that they took them and put them in the hospital close by and told the sweeper who was there to report to them if those people should die. They were in a very bad condition at that time. When I saw them next morning they were lying with their faces to the ground and fetters on their legs. I saw them lying in the hospital tent. This time we were kept in the Concentration Camp for twenty-four days. After this we were taken to the D 1 camp at Seletar and kept in the same place as previously. Whilst there we did fatigue work in connection with the construction of an aerodrome, that is, trench digging, etc. We remained there till December 1942.

After that the whole of the personnel in D 1 camp were taken to Adam Road Camp and kept there for a short while, after which we were detailed for fatigue work for Sambauang aerodrome. Ultimately, we were sent to New Guinea on May 1, 1943. There were about 2,400 who went with me to New Guinea. Finally, I joined the Americans in Hollandia in April 1944. I never joined the I.N.A.

Cross-examined by Counsel for Defence

When the war with Japan broke out, I was at Lupkia in Malaya. It is not true that half my battalion ran away in that campaign. Our battalion was divided into two parts, one part was sent to Kuala Lumpur under Colonel Gillani and the other half went to Salembang under Colonel Tyrrell. I went with Colonel Tyrrell's party. We surrendered on February 15, 1942. None of the men in my battalion twitted Colonel Tyrrell saying "Now you also are without arms". The Camp Commandant at Neesoon Camp was Capt. N.Z. Giani who was succeeded by Col. Shah Nawaz Khan. I heard Col. Shah Nawaz Khan lecturing there. I was not present at his lecture in the camp but attended his lecture in the mosque. We were not given the substance of the Bidadari resolutions. He said that Sikhs and Hindus both had already volunteered and that the Mussalmans should also join it. He said 'the Muslims must join the I.N.A.

because when the Hindus and Sikhs go they will trouble you in your homes in India. He did not threaten us with force but he said that we ought to join the I.N.A. He did not say that he only wanted sincere men. He said 'I will not give any sort of trouble to you but you should volunteer'. He said 'I do not want to press the men and I want true volunteers'. After that all Mussalmans said 'dua khair' and begged that all Mussalmans should be excused and we decided not to join the I.N.A. There was no charge against the men of my Unit of having committed theft of seven cows belonging to civilians and of having slaughtered and eaten them. This charge is a lie. I am shown my additional statement in the summary of evidence. I admit having said in the summary of evidence that Major Aziz Ahmed told us that we were to go to the Concentration Camp because we had killed a cow. No skin or bones were found and no investigation was made. Till I was in Necsoon Camp there was no difference in rations for the volunteers and the non-volunteers. In July 1942 there was no separate treatment for volunteers in Bidadari Camp. I was carrying on anti I.N.A. propaganda up to July 1942. Aziz Ahmed never told us that we were being sent to the Concentration Camp because we had killed a cow. I stated in the summary of evidence about Major Aziz Ahmed having told us that we were all to go to the Concentration Camp because we had killed the cow. I do not know anything about the I.N.A. In the Necsoon Camp there were at least 15 000 to 16 000 men.

I was released from the Concentration Camp after 21 days because I had become very weak. I was sent from there to D 1 Seletar Camp from there to the hospital. As far as I know only a few Mussalmans joined the I.N.A. I do not know about all the Mussalmans, but I know that only a few Mussalmans of my battalion volunteered for the I.N.A. i.e. only one or two. I do not know anything about the others. I do not know any other Mussalman officers except those who were Camp Commanders in Necsoon, Bidadari and Seletar. Those who were with us were not volunteers. I know Col Gillani, Capt. Malik, Capt. Jehangir, Capt. Mirza, Capt. Perzari and Capt. Durrani. They volunteered after they had been to the Concentration Camp. Capt. Mirza was with me in the Concentration Camp. He was not volunteering and that was why he went with us non-volunteers. He was taken to the Concentration Camp because he did not volunteer and did not allow his unit to volunteer.

It is not true that 12 of us were sentenced to three months imprisonment for killing a cow. We were kept back in Concentration Camp because we were non-volunteers and would not volunteer. The people who were kept back were the ringleaders. For the I.N.A. we were vagabonds and very bad people, but for my own Army I was a very good NCO. I have many things to my credit. I did several Military courses in which I did well. During the fight I had I was praised by my Commanding Officer Col Tyrrel and he sent in recommendations about me. After 17 days I was released because of intervention by Capt. Malik.

When we were beaten there were two Jemadars, one Havildar and five or six men present. There was no scuffle between us and them except that they used to beat us while we were on fatigue.

The commandants of the Samawan Camp and the Adam Road camp were Japanese. Captain Akbar Babar of the I.N.A. was the Camp Commandant at Seletar between October and December 1942.

Questioned by the Court — The special food that came from the supreme headquarters for the volunteer patients in hospital consisted of bananas and other fruits.

By Judge-Advocate

I remember hearing lectures from Capt Shah Nawaz Khan and Lt Dhillon at Neesoon Camp I heard lecture from Capt Shah Nawaz Khan in a mosque about the month of April Lt Dhillon lectured in March 1942

Havildar Wolit Bahadur, 2/9th Gurkha Rifles, examined by Counsel for the prosecution through the Interpreter, stated .

I joined the Indian Army on November 1, 1928, and have ever since served with the 2/9th Gurkha Rifles I went with my Battalion to Malaya on August 20, 1941 I fought against the Japanese When Singapore fell, I was taken prisoner there We were taken to Bidadari Camp where we were kept for about a month Afterwards we were moved to Buller Camp A drama was given there and lectures were delivered about the I N A It was said that we would have to take up arms against the British

I was in B-4 Bidadari Camp on September 24, 1942 We were ordered to collect at 7 p m on that day for a lecture First of all an I N A officer delivered a lecture He said that "We have already informed you about the I N A You people have not accepted what we said I am going to show you one result of your conduct" We could see an armed group of about 14 men standing on the left side of the meeting Then he asked all the followers, sweepers and water carriers, who belonged to the 2/9th Gurkha Rifles, to come forward The followers were told that they had not done as they were advised to do They asked the followers if they were prepared to join the I N A or not The followers were sweepers, mochis and water carriers, and they were all Hindus The followers said that whatever happened to their Unit they would not join the I N A Then an I N A officer ordered two or three I N A volunteers to beat the followers with lathis They started from the right, finished to the right, came back to the right, and went up and down beating them Two or three of the followers sat down on the ground though they were not unconscious Then an I N A officer called out six or seven sepoy by name to come to the front. He said that they were the ring leaders who do not allow the 2/9th Gurkha Rifles to volunteer for the I N A Two I N A men were then ordered to beat those six people, and the two people started beating them The beating continued for about ten to twelve minutes and one man fell down When the man fell down, our Unit stood up and protested against the beating and said "Even if you beat us like this, we are not going to join the I N A, but we are ready to do fatigues for the Japanese" One of the I N A officers said "Whilst you were gathered at this meeting, on whose orders did you stand up?" We said that as we were not getting justice we stood up to make a report Whilst we were standing and talking there was a good deal of noise On this, one of the I N A officers ordered the guard who was on our left flank to fire The guard fired two or three rounds in the air and no shot came near us Another I N A officer then said "Are these Gurkhas your fathers that you are not shooting them?" Our blood also warmed up then and we started moving forward They fired on us and one or two of us fell on the ground We were not armed but we had our felt hats and our wooden *chaphes* and we threw our *chaphes* at the guard I saw an I N A officer aiming a pistol at me Knowing that I might get wounded I retreated a bit, when he fired at me and I got hit on my left knee I staggered back and fell Firing was going on I was not quite unconscious, and lifting my head I could see an I N A officer riding a motor cycle, who stopped near me He stopped the motor cycle at about ten or twelve yards from me The other I N A officers ordered the 2/9th Gurkhas to fall in While there I saw two or three people falling down Nine people were wounded, eight by rifle fire and one by being struck by a lathi. After the Unit had fallen in, they were marched

off I do not know where The hospital lorry came and took away the wounded. The I.N.A. officers came to me in the hospital several times and they told me to sign in the I.N.A. books. They said 'if you sign the I.N.A. books you will get good medicines and the bullet will be taken out from your left knee. I did not agree to volunteer for the I.N.A. I remained in the hospital for approximately five months. When I got well I was sent back to my Unit which was in Buki Tima Road Camp. We remained in the camp up to 1945 when the British Army arrived and they brought us here.

Cross examined by Counsel for Defence

I was present at the Farrar Park meeting there when we surrendered. I remember we were handed over by the Japanese officer to Mohan Singh. We were told that we would have to obey Mohan Singh's orders. There were about 550 men of the 2/9th Gurkha Rifles in Buller Camp. Once or twice in the Lecture Hall they said that we should join the I.N.A., but there were not many lectures while we were there. A lecture was delivered by an Indian officer and a Gurkha afterwards interpreted it. The second time after the drama had taken place, some of the Gurkhas were taken aside and a Gurkha addressed them. This drama was arranged by the army and it was just an entertainment. No stories about Indian heroes were told at this drama. I do not know the story of Mahabharata. I know a few stories about the Ramayana. I did not hear any story from the Ramayana being shown there. I know Jemadar Puran Singh Khawas. He belonged to the 2/1 Gurkha Rifles. He lectured to us once for a short time after the drama. He said that we had fallen into the Japanese hands and had to carry out their orders and do their fatigues. He told us that the British had run away and left us there. He said that our home was in India and we had to join with other Indians to fight for India. He said that for that reason we should join the I.N.A. and that the I.N.A. was being formed to set India free. I came to know later that Mohan Singh was forming the I.N.A. In the last lecture at Buller Camp I realised that Mohan Singh was forming the I.N.A. I know Jemadar Til Bahadur Adhikari. Jemadar Puran Singh Khawas was a man who was respected by our Unit and so was Jemadar Til Bahadur Adhikari. Jemadar Til Bahadur delivered only one lecture, at which I was present. He also told us about the object of the I.N.A. which was the same as Puran Singh had told us. When Til Bahadur delivered the lecture there were about 600 men present. I know Rifleman Ram Singh. The people of our Unit did not respect him. He joined the I.N.A. when he came to Bidadari Camp. Jemadar Til Bahadur's lecture was the last of the three. Jemadar Til Bahadur and Jemadar Puran Singh were living in the same camp with their Units.

I know Subedar Paras Ram. He was a respected man and so were Jem. Setu Khamka, Jem. Tegh Bahadur Til Bahadur and Havildar Man Bahadur. I only remember Jemadar Til Bahadur lecturing in B-2 Bidadari Camp. He told us the object of the I.N.A. why it was formed that we should join it, and that it was formed to fight for the freedom of India.

There was a dispute when we refused to do fatigue duties for the Japanese. The leaders whom I have named told us not to object to do fatigue. In spite of their persuasion some of us did not obey.

At this stage the court decided that the interpreter Capt. Nixi, was unsatisfactory. Major Pritam Singh was sworn in as interpreter. Witness further stated

The guard was sent because some of us did not obey. The guard came to arrest the ringleaders. We were about 550 men. Some of the men had a dispute with the guard. The guard stopped us from doing this and then fired in the air.

When we did not obey the order of the guard, they fired. The guard did not prevent us from doing fatigue but they spoke to us about I N A which we did not obey. First they fired in the air and when we did not obey, they fired at us. Two or three men were injured in the firing.

Re-examined by Counsel for the Prosecution. The dispute between the guard and ourselves was that we resented the appearance of the guard during the lecture time.

Questioned by the court. The bullet was taken out of my knee after one or one and a half months in Bidadari Hospital.

Rifleman Rabulal, 2/9th Gurkha Rifles, examined by Counsel for the Prosecution through the Interpreter, stated:

I enlisted in the Indian Army on October 31, 1938. I went to Malaya with my regiment on August 20, 1941. I was taken a prisoner when Singapore fell. I remained in Buller Camp for about two and a half months.

I was told about the I N A when I was in the Buller Camp. The talk there was that we have to free India with the help of the Japanese and that everybody should co-operate. We were told in Bidadari Camp that those who would not join the I N A would get no opportunity of freeing the country and at the same time would be running danger. One I N A officer asked me to join the I N A. He said that if I did not join the I N A I would be sent to the Concentration Camp and would be given a beating. I refused to join the I N A. V C O's were then separated from us. I do not know what happened to them. When I went to the Concentration Camp I saw them there and the N C O's of my regiment were also taken away from us. I saw them later in the Concentration Camp. We were then given lectures on the formation of the I N A. We were told that if we did not join the I N A we would be taken away to the Concentration Camp like our N C O's and V C O's.

In Bidadari Camp on September 24, 1942, my battalion was fired upon. On that day at 7 p.m. I was in a party which had finished fatigue duty and was coming back, when one I N A officer gave us a lecture. The whole battalion gathered together. Out of my battalion one or two men were taking food in the kitchen and so could not fall in. The I N A officer told his men that that was not the time for food and these men should be given a beating and brought to the place of assembly. Then they were given a beating and brought there. There was a party with lathis and another party with arms in front of us. The armed party had rifles and bayonets. The I N A officer told the sweepers and followers of my Unit that they belonged to India and asked why did they hide themselves amongst the Gurkhas? They should come forward and help the cause of their country. The followers were ordered to separate from us which they did. They went over to the I N A officer and said: "We have served with the Gurkha Regiment for a very long time and if the regiment joins the I N A we will also join with them." The I N A officer ordered two of his men to beat these followers, which they did. Two followers fell on the ground as a result of this beating. After this the I N A officer addressing us said: "You have not obeyed what I had told you. As you are loyal to the British Government you are our enemy. You will know the result of this today." Then the I N A officer read out names from amongst us. Before reading out the names he gave orders that the men whose names were called out should step forward and fall in single line. This was done accordingly. After they had fallen in, the I N A men started beating them one by one from the right. After three or four men were beaten the fifth man was beaten even more severely and he fell on the ground. Even then the I N A officer did not stop beating him. The I N A officer himself kicked me. Tears came to our eyes and we stood up. We protested and said that if they wanted to kill us

they might as well kill the whole lot of us, but we would never join the I.N.A. At this the I.N.A. officer asked us why we had stood up without orders. He ordered the guard to fire. The guard then fired in the air. There was another I.N.A. officer with the guard who said, 'Are the Gurkhas your fathers that you are firing in the air? You should fire at them.' Then the guard fired on us. We had no arms and no sticks. We all got confused. At that time we had no hopes of living and we all proceeded towards the guard. We took off our wooden *chappis* and threw them at the guard. Eight of our men were wounded by rifle fire. This firing lasted about half an hour. After this an I.N.A. officer came on a motor cycle. Soon after one armed company of I.N.A. came there and surrounded us. The officer who had come on the motor cycle ordered the I.N.A. officer who was lecturing to us to fall in. We fell in at his orders. We were ordered to be taken to a Concentration Camp and were marched off from there surrounded by an armed guard. In the Bidadari Camp before this firing took place, some men were doing fatigue for the I.N.A. and others were digging trenches. I never refused to do this fatigue work and I am certain none of my company refused. There were about 450 men of my regiment doing fatigue work in Bidadari Camp. At the time of firing it was dark and I do not know what kind of wounds were inflicted on the men. When we went to the Concentration Camp we saw one officer and three or four men of the I.N.A. posted at the gate. They searched all of us after which we were put in the camp. Inside the camp there was a small enclosure with barbed wire which had no roof. The whole battalion was shut up there. It was a very small place and most of the men could not sit inside it and we had to stand the whole night. We had no clothes either and the whole night it rained. The following day at about 10 or 11 a.m. the officer in charge of the Concentration Camp gave orders to the effect that we would have to go back to our camp. But he had separated 14 men from my party. He said that these 14 men were doing propaganda against I.N.A. and dissuading the personnel from joining the I.N.A. and for that reason they were being detained here. At Bidadari Camp we began to do the same fatigue work as we were doing before. After that my Battalion was sent for the second time to the Concentration Camp. I went along with them. On the day following the arrival in the Concentration Camp, they started beating us and making us do fatigue. This continued for five days. For the first two days after our arrival in the Concentration Camp there was no arrangement for food. On the third day we were ordered to partake food. We then appealed to the I.N.A. officer asking him why we had to come here again and again. A decision should be given about us otherwise we were not prepared to take our food. That is why we did not take food for 5 days. After 5 days we went back to Bidadari Camp.

The day following my arrival at Bidadari Camp I went to Hospital No. 4 at Seletar where I remained for about a month and a half. I was treated there and I became well again. I then rejoined my Battalion at Bidadari, where we remained for 5 or 6 days. Then, we went to the River Valley Camp. After three or four months the Japanese took us for digging trenches in the jungles. Then in August 1945 we were taken back to the River Valley Camp. After we had been there for three or four days, the British Army arrived there and rescued us.

Cross examined by Counsel for Defence

Between August 1941 and four or five months after we were under training in Malaya. We were doing military training there for the offensive. Our battalion

went into action on December 7, 1941, at Jitra. This action lasted for a week. Then, we retired to a place called Alor Star. Sometimes arrangements for ration and other supplies were complete; at other times they were not. After we retired from Kuala Lumpur, a British Regiment which joined us at Kuala Lumpur on our retreat was with us. I was not wounded in action on retirement till Kuala Lumpur. I was not wounded in the campaign. We did not have any tanks support when we retired. We had no air support except at Panchi Kaithal, when about 40 of our aeroplanes flew over us. I was present at the Farrar Park meeting on February 17, where one British Colonel was also present. I do not recognise him and I am not sure of this.

I was rescued from the Japanese on August 15, 1945. I had conversations with the officers of my own Regiment, but no statements were taken from me. There were roughly 1,800 to 1,900 Guikhas from my Unit in Bidadari Camp. In River Valley Camp some men of my Battalion made statements to my C O and Subedar Major. I have made statements twice before. My first statement was taken at C S D I C Office, Delhi. Sometime in October, my second statement was taken down in the same place in November. I signed the statements on both occasions. At the time of retreat there was no preferential treatment as regards food and other comforts to British troops.

When we came to Singapore we were put in defence position. At Puntin Kichia when the Australian troops took over the front line we were told to take rations to them, but we did not do this in Johore Baru. I carried rations only once. I do not know whether British troops carried rations for Indian troops.

In Bidadari Camp discussions took place among the prisoners themselves about joining or not joining the I N A. It is true that those who were like myself resented the discussion about joining the I N A. When the I N A officers came to address us on the I N A we did not tell them to get out. In our hearts we resented their coming and giving us advice to join the I N A. Until Wolit Bahadur was wounded, he was with me in the camp. I do not remember any dispute about fatigues. I never spoke to Havildar Wolit Bahadur concerning fatigues. There were roughly 15 to 20 men in the guard with whom we had trouble. All men of this guard were armed with rifles. The six guards who were armed with lathis ran away when we attacked them. Our party which attacked the guard consisted of 550 men. Some 300 to 350 of our men had wooden *chappals*.

Questioned by the Court

The two statements taken from me were in connection with the case against the three officers before the court. At the time of rescue by the British about 400 of the original 550 of my regiment were still with me. The remaining 150 had been taken away for fatigues by the Japanese.

Subedar Ram Sarup, R I A S C, being duly affirmed is examined by Counsel for the prosecution.

I enlisted in the R I A S C in October 1939. I was posted to 31 G P T Company in Bangalore. I went to Malaya with my Unit in October 1941. My section went to Ipoh. I was in Singapore when it fell. A day before Singapore fell, I left my Unit in order to escape. I had put on civilian clothes and then I mixed amongst the civilians. I remained in Singapore till April 13, 1942, when I was spotted by one of my unit clerks who suddenly appeared in my room where I was sitting. Because I was ill, he told me to go to the Camp. My Unit was then in Seletar Camp. When I went there I was told to work as a clerk.

I did not volunteer for the I N A and I did not intend to volunteer. While I was employed in the office of D-1 camp certain men were taken away. I was myself taken away to a Concentration Camp after about three months. I think it

was in July 1942. When we came to the Concentration Camp we came out of our lorry, I took out my luggage and kept it aside. A search was made by a Sikh. I was told that I was doing anti I.N.A. propaganda and that was why I was there and now I would suffer the consequences. Then a man was called who appeared with a stick in his hand and one of the camp staff told him in Punjabi, 'Guests have come, give them a good reception. (Mehman aye hain Inki Khair Tawaze karo)'. I was given a blow with a stick across the shoulder and a kick. I fell down and again I was beaten with that stick. I became unconscious and later on when I regained consciousness I was taken to one of the cages,—an open cage there in the camp—and left there. I remained the whole night in that cage. The next morning I was taken out by one of the sentries and was told to do fatigue. There were 15 or 20 men then who were doing fatigues there. I fatigued from morning till evening. There was a break at about twelve for meals. Some rice was given but actually I did not have any. We had to dig earth, fill the sack with it and empty it out at another spot. There were sentries posted nearly on every man and they were pressing them to do fatigue quickly and at the double. I came back to my cage in the evening at about six and was feeling very tired and ill. Half an hour later one of the camp staff officers with another man came and asked me how I was. I said I was alright. He asked me if I was going to volunteer. I replied that I had already suffered and I was ready to suffer more but I was not going to volunteer under those conditions. At this the officer abused me and told the other fellow to show me how they treated those who did not agree. Then he tied my hands at my back and gave me a blow on my face, kicked me and beat me with the stick. Again I became unconscious. When I regained consciousness the other fellow asked me whether I was still unwilling to volunteer. This time I gave my consent under the impression that it was better to become a volunteer than to die there of the beatings. The sentry and the persons who beat me were working for the I.N.A. to make people volunteer. At that time there were no badges, etc. by which to recognise whether they belonged to the I.N.A.

Cross examined by Counsel for Defence

I know Capt S. A. Malik. I was under him in the I.N.A. Under his instructions I infiltrated into India. When I arrived in India I reported to my Depot. When I arrived at the Indian border I got into a train and went to my home. I remained in my home for about 20 or 25 days. I reported to my Depot at Ferozepur without being pressed by anyone. When I reached Rawalpindi my wife was there. She was sick and I was advised by the doctor to take her to some cold place. So from there I went to Kashmir. I went to my place, came back, and then I thought it better that I should report to my Depot. I was sent to India to collect military information. I was a very trusted man in the I.N.A. I let them trust me, and that is why I was deputed for this work. I did not wish to be faithful to the I.N.A. I was one of the earliest to join the I.N.A. I accepted its objects. At the time I joined but I did not fully believe in the movement. I am a Matriculate. It was the object of the I.N.A. to free India. I accepted that I was a willing member of the I.N.A. When I joined I believed in the movement. The day before the Army surrendered I got into civilian clothes with the intention of escaping. I did this in consultation with my O.G. Major Weinmann. He just allowed me to escape. I was not selected for a job. It was a favour to allow me to go. It was anticipated that we would have to surrender. Two men were allowed to go away from my company. I requested for permission to go.

As far as I know, the surrender orders had already been received. The strength of my company was three hundred. I wanted to come away

originally because I did not wish to be a prisoner of war. I had some money with me and maintained myself with it. I intended to escape to up-country, but I did not have any chance. A clerk of my unit persuaded me to go back to my unit. Major Weinman continued to command the company and accepted my surrender when I went back. On April 18 I rejoined my Unit. Major Weinman was not a Britisher—he came from Ceylon.

In April the movement for forming the I N A was advanced. People were volunteering. I did not believe in the movement at that time. Later on when I was a volunteer, I believed in the movement, I thought then it was a good thing to do so. I did not invent this story in order to save my skin, when I went back to the army. My object in coming to India was to obtain information and not to leave the I N A.

By the Court. The cage into which I was put in the Concentration Camp was about three yards by five yards. I was alone in the cage but two or three men could come in. I was there for one day.

Lance-Naik Fitter Mohinder Singh, examined through the interpreter, stated

In September 1939 I joined the Indian Army Ordnance Corps. I was attached to H Ordnance, Lucknow. I went to Malaya. I was taken prisoner in Malaya at the Slim river on January 8, 1942. I was taken to Kuala Lumpur from there. From there I was taken to Bidadari Camp, Singapore, and then to Tinga Air Port and to Seletar Camp. In May 1942, I reached Seletar Camp. In Bidadari Camp a lecture was given by one captain of the Indian Army in which he referred to the Bangkok Conference where an Indian Independence League had been formed with Rash Behari Bose as its President and a Council of Action. The Conference had decided to form a national army under the command of Captain Mohan Singh. That is all what he said. I volunteered for the I N A in Seletar Camp in September 1942. I was posted to S S Group, Neesoon Camp. This group was trained in disguise and small arms training and to penetrate into India and to sabotage.

I know that Mohan Singh was arrested in December 1942. The I N A was disbanded after that and our commanding officer delivered a lecture to the effect that 'our present leader has been arrested and the I N A disbanded and it is now left to each individual to join the I N A or not. After that similar lectures were being given and we amongst ourselves were also discussing about I N A. At that time I was in Neesoon Camp. I did not want to volunteer because our leader Mohan Singh was arrested. In Neesoon Camp I and my other companions were asked to volunteer for the I N A. We refused.

When volunteers and non-volunteers were being separated, I joined the non-volunteers. I was ordered by my Company Commander not to join the ranks of non-volunteers. I then remained where I was in the Neesoon Camp. After two or three days one Jemadar came and took three of us to a Concentration Camp. There I was beaten. Before I was beaten I was informed that the beating was given to me because I had done anti-I N A propaganda. I was given 6 strokes with the sapling. I was clothed in a vest and a pair of shorts. My back was bruised with this beating and some blood and fluid oozed out. After that I was put in a barbed wire cage. I was alone in that cage. This cage was about 6 feet long and 3 feet wide. I remained in that cage for 15 days. For the first two days I was not made to do any work because of the bruises and pain that I had due to beating. Then I was made to do fatigues. I was made to do this fatigue for 8 or 9 hours during the day time. The fatigue consisted of carrying loose earth in a yoke for three or four hundred yards and coming back again. The load was about one maund which had to be carried. I was doing this all by myself. There were others also who were doing other fatigues. The food which we were given was bad.

We were given rice mixed with lime and grit I then became very weak. I inquired from the sentry how I could escape from there. He advised me not to do propaganda against the I.N.A. and that I should volunteer. I then became a volunteer.

In March 1944 I was sent to the front. I was detailed to bring rations from a nearby hill. When I went there, I found a British regiment, to which I surrendered. This was at Sita Hill.

Cross-examined by Counsel for Defence

The captain who lectured to us at the Seletar Camp did not say anything about the formation of I.N.A. with the object of liberating India. I however understood from what he said that the I.N.A. was to liberate India and I joined it for the first time with this object. That was at first my principal object. I joined it because our leader Captain Mohan Singh had made us believe that India would be free. I do not know why Captain Mohan Singh was arrested by the Japanese. I came to know about the formation of the second I.N.A. because volunteers for it were being asked for. We had lectures every day about the formation of the second I.N.A. My Group Commander Jemadar Abdul Ghani, informed me that the second I.N.A. was going to be formed and he also told me that it was being formed with the same object as the first I.N.A. namely the liberation of India. I know Capt. Taj Muhammad Khanzada. I do not know whether he was a member of the second I.N.A.

I was taken to the Concentration Camp with the knowledge of my group commander, company commander and battalion commander. Capt. Taj Muhammad delivered a lecture to us in which he had made it clear to us that it was our own option whether we joined the I.N.A. or not. I did not complain to Capt. Taj Mohd. of my being forced to join the I.N.A. because he was not there to be complained to.

I went to Batu Pahat as a member of the I.N.A. in the end of March or beginning of April with the Advance Party about three or four days after joining the I.N.A. I joined it because I could not bear the hardships and with the object of escaping. I believed in Capt. Mohan Singh. I accepted the object of the I.N.A. as given by him to us which was the freedom of India. This object remained suspended in my mind not for three weeks, but for three months. Even after the end of this period I did not believe in this because our leader was arrested.

I do not know the exact month when Subhas Chandra Bose arrived in Rangoon. He did not come to Rangoon when I was there. I was in Rangoon from September 1943 to December 1943. Subhas Chandra Bose addressed those people of the I.N.A. who were at Batu Pahat. I was not present at the lecture. I was not given the opportunity of choosing whether I would go to the front or not. In Rangoon we had a group commander. I was not told when I left Rangoon that it was my option whether to go to the front or remain behind. I joined the 1st I.N.A. voluntarily. I did not join the second I.N.A. voluntarily. I am telling the truth about the beating.

November 28

Sepoy Dilasa Khan, 5/14th Punjab Regiment, examined by Counsel for the Prosecution through the interpreter stated

I enlisted in the Indian Army in January 1940. I went to Malaya in a draft and joined my battalion at Penang on November 25 1940. I was with my battalion when the war broke out with Japan. On January 15 1942 I was taken prisoner at the Slim river by the Japanese.

I later on joined the I.N.A. in September 1942 and was posted to Azad

Brigade, No 4 Battalion in Neesoon Camp. Later on I was transferred to 3 Battalion Bose Brigade, in October 1943. Col Shah Nawaz Khan was commanding Bose Brigade. I recognise Captain Shah Nawaz Khan as an accused before the court. After I was posted to Bose Brigade, Captain Shah Nawaz Khan delivered a lecture which I heard. He said that the Bose Brigade was to go first of all to the front and that the brigade is composed of picked officers and men. He warned us that when we go to war there will be many hardships and even death and that if any man is afraid of those hardships and death he can conveniently now drop out, because we have to fight the war for freedom and for this fight we do not require cowards but courageous men. He also said that if and when we fight with our allies—the Japanese nation—it should not happen that we remain as second rate in the fight and thus disgrace our nation. When we reach India we shall meet Indian men and women and those among the latter who are elders to us, we should consider them as mothers and those who are younger we should consider them as our daughter and sisters, and if anybody will not obey these instructions he will be shot dead and if and when India is freed and the Japanese who are now helping us tried to subdue us, we shall even fight them. He also said that even now if a Japanese gives you one slap you should give him three in return, because our Government is parallel to the Japanese Government and we are in no way subservient to them and that when we reach India, if we notice any Japanese maltreating an Indian lady he should be first warned by word of mouth not to do so but if he continued to do so, we were at liberty to use force and even shoot him in order to prevent it, because the fight which we are making now is for the freedom and well-being of India and not for the benefit of the Japanese. This lecture was delivered in Taping.

From there we moved to Champing in Thailand on November 25, 1943. Eventually, on January 24, 1944, the whole brigade was assembled in Rangoon. Then my regiment moved from Rangoon on February 7, 1944, to Falam-Kaka. My company arrived there on March 5. My Battalion was carrying rations from the roadhead to the front line, a distance of about 60 miles. My company was on patrolling duty. I along with 100 men of my company went on patrolling duty. We were armed with machine-guns, Bren guns, Tommy guns, rifles and pistols. We were given orders that in front of us there was a British Indian regiment which had one company of Punjabi Mussalmans and that we were to contact them and try to bring them over on our side. Our main object was that with propaganda we should bring them over to our side, but if they started firing on us, we shall, of course, have to fire on them too. We marched the whole night and in the morning we halted at a place in the jungle. From there we marched along the bridge. On the other side of the ridge there was a little village and in the valley we saw was a party of Chin levies. We were both advancing towards the same village. As we were uncertain as to who they were, one of our men inquired from them about their identity. In reply, they said something like "men party", but we could not follow its meaning. Eventually, we both arrived near the village and our Company Commander discovered that it was a party of British levy. Then, we deployed and took positions round the village. We neither fired on them nor did they fire on us, but later on we heard some firing in the nullah. My company captured the whole party of the levies. At that time they were all armed, but we collected them. We did not contact any Punjabi Unit and from there we retired. On March 31, 1944, I came over to the British Army.

Cross-examined by Counsel for Defence

- I rejoined the British Army about 10 miles from Haka. I joined the I.N.A. when it was first formed in September 1942. I know there were four brigades in those days, but I do not know what the exact strength

of them was I heard there were surplus volunteers but I do not know their number. The first I.N.A. was dissolved in December 1942. I then joined the second I.N.A. I saw Subhas Chandra Bose in Rangoon. He was generally addressed as Netaji. I was present when the whole brigade was assembled and was addressed by Subhas Chandra Bose, a day previous to our departure from Rangoon. He told us that we were the soldiers of freedom for the liberation of India. He also told us that we shall have to face hardships and even death and that we were at liberty to remain behind if we liked. He further said that as we were fighting for the liberation of India we were not well off as regards money and other resources and that whatever was possible was being given to us. He also said that as we were poor people we could not afford to give anything better in the way of rations, etc. than what was being given and we were asked to carry on on short rations.

We were given instructions to win over the Punjabi Mussalmans to our side when we made contact with them when we were out with the patrol. I do not know how far away was this Punjabi regiment from Falam. After capturing the Chins, we took out the bolts from their rifles and gave the useless rifles back to them. Then we made them sit alongside the road. We did not deprive them of anything else. Otherwise we generally treated them well. The condition of our clothing and equipment was serviceable. We remained in that village where we had captured the Chins for about 15 minutes and then we retired.

Havildar Nawab Khan 1/13th Frontier Force Rifles examined by Counsel for the Prosecution stated

I joined the Indian Army in December 1937. I was posted to 1/13th Frontier Force Rifles. I went with my battalion to Malaya in April 1941. When hostilities broke out I was with my battalion at Kotah Bahru. I was in Singapore when it fell.

I joined the I.N.A. in October 1943. I was posted to Subhas Brigade No. 1 Guerilla Regiment. I was sent to Taiping as Intelligence Havildar. There were three battalions in that brigade five companies in each battalion and three platoons in each company. In each battalion there were approximately 900 officers and men. The Brigade Commander was Lieut Col. Shah Nawaz Khan whom I recognise as an accused before the court. When I saw him he was wearing two golden bars and one golden star as rank badges. After joining the brigade I went from there to Rangoon where I arrived on January 3, 1944. I remained there up to February 12 and thereafter I left. The brigade was doing training consisting of P/T drill, road marches and night exercises. On February 12 I left Rangoon to go to the front line. I went along with the advance party. The 2nd battalion and 3rd battalion with S.S. company and signal platoon followed us. In April 1944 No. 1 battalion was left at Rangoon. One company of 2nd battalion was at Falam, two companies of the same battalion were at Haka, two companies of the same battalion were at the 48th milestone on the Falam-Kalemyo track. Two companies of the 3rd battalion were at Fort White and two were left at Pokokku to bring rations for the brigade and one company was in Kalemyo area. The S.S. company was divided into 12 groups and three groups of that company were attached with each battalion and three groups at brigade headquarters. The advance headquarters of the brigade was at first at Falam and then it moved to Haka. I was myself at Falam. At first the Brigade Commander Lt.-Col. Shah Nawaz was present there and later on he left for Haka. The company of the 3rd battalion which was at Kalemyo was ordered to move

from that area to Haka in the first week of May. In May 1944 I saw Lt-Col. Shah Nawaz Khan at Falam. He came from Haka. He arrived on May 14 and in my presence he told Lieut. Abdur Rahman who was Ordnance Officer in the regiment that he (Lt-Col. Shah Nawaz) was leaving for Japanese Div. Headquarters which was most probably at Indangyi. He also said, "I think my brigade will leave for Imphal area later on, leaving 200 men at Haka and you are responsible for sending rations for these 200 men for about six months. Further he said that there would be an attack in the Klang-Klang area. Jangja Parwana and one Gairwah Company would take part in the attack. The attack was to be against Britishers and it was to be on May 15. Their object was to capture as much rations as possible and after that they were to withdraw to the 48th milestone. Shah Nawaz Khan told me to remain there along with Lieut. Abdur Rahman and "when rations arrive here for six months for Haka troops you will have to go back to the 48th milestone." While there I gave a message to Shah Nawaz Khan. I was ordered on May 15 at about 4 o'clock to go to the telephone to see if there was any message from Haka. I went to the telephone and after waiting for about 10 minutes I was called into a room. I received a telephone message which was roughly as follows:

"To Lieut-Col. Shah Nawaz Khan from Major Mehboob Ahmed. Enemy positions captured after little resistance. The spirit of officers and men as high as ever. Own troops no casualty. Enemy three or four wounded or dead. Captured blankets, matches, cigarettes, tinned milk, etc. Will explain verbally."

I took that message and handed it over to Capt. Shah Nawaz. After that I remained at Falam for about 7 or 8 days and then I escaped.

Cross-examined by Counsel for Defence

I was aware in October 1943 when I joined the I.N.A. that there was a declaration of the Provisional Government of Free India. Prior to my joining the I.N.A. I was in a prisoner-of-war camp. I surrendered on February 15, 1942. I was at the meeting in Farrar Park on February 17, 1942. I remember the name of Captain Mohan Singh. At that meeting the Indian prisoners of war were handed over to Capt. Mohan Singh by Major Fujiwara to whom they had been surrendered by a British officer. Major Fujiwara told the Indian prisoners of war that if they wished to join the I.N.A. they were free men. I am aware that in October 1943 Subhas Chandra Bose assumed command of the Indian National Army. I was a member of the Indian National Army which was a properly organised army. I knew after joining the army that the sole ambition of the I.N.A. was to fight for the freedom of India against any army in the world, but my own idea was not to fight but to escape. By "any army in the world" is meant also the Japanese. I know that the Haka-Falam was really one of the fronts nearest to the Indian border.

So far as I am concerned I took instructions from our own Indian Officers only and not from the Japanese. As far as I am aware there were no Japanese in command in our area or otherwise in the I.N.A. There was a long carry of 48 miles for rations. The rations consisted of rice, salt, oil and sugar. Sugar was very scarce. The Indian National Army was fighting under great hardship on that front. Whilst I was in the I.N.A. I carried out my duties faithfully.

I was present when Subhas Chandra Bose addressed a meeting in Rangoon before I left for Haka front. At this time Subhas Chandra Bose had taken command of the Indian National Army. He told us that the Indian National

Army was fighting for the liberation of India that that was still its object and not for the benefit of the Japanese that he was merely taking aid from Japanese in order that India might be freed that in the conditions in which we were, we were poor in means and resources, that the I.N.A. was no bed of roses for any one who joined it that we would not get better material benefits of life by joining the I.N.A. that people should remain in the I.N.A. if they had genuine patriotism and that any one who did not wish to go forward need not follow him Nobody from No. 1 Guerilla Regiment stayed behind Later on Battalion and Company Commanders asked for names of those who did not wish to go to the front I do not know whether any one gave their names Falam was about 95 miles from the Indian border When I rejoined the British I was allowed to go to my home

Questioned by the Court

There was no fixed scale of rations If we received it from rear stores we were issued enough rice If we were short some days, there was no ration at all 10 or 11 ozs was the maximum ration of rice The ration was not supplemented by foraging Whenever there were no rations people went to the jungle and got bananas and whatever they found in the jungle

Hanuman Prasad Nursing Sepoy examined by Counsel for the Prosecution through the interpreter stated

I joined the Indian Army on July 9 1941 I along with my Unit arrived at Singapore on January 29 1942 I was in Singapore when it fell I was taken a prisoner Subsequently I joined the Indian National Army on April 14 1943 I was then posted in No. 7 Battalion Nehru Regiment, as Nursing Orderly The Brigade to which I was attached eventually went to Burma. In October November 1944 my Brigade was at Myingyan Major G.S. Dhillon was commanding my Brigade at that time. At Myingyan the Brigade was resting during the day time and at night was digging trenches. I was performing the duties of Nursing Orderly in the Brigade Central Hospital In February 1945 the Brigade moved to Nyangu We were given instructions by the O.C. Hospital to the effect that a battle was going to be fought soon and there might be casualties for whom we had to prepare our hospital. No patients came. Our hospital was not completed when by February 14 we received instructions to evacuate Nyangu and to retire to Popa The whole Brigade moved to Popa. It remained in Popa for two or three days Then it went to Kyauk Padaung We opened our hospital there. Then the hospital was disbanded and I was sent to B Company Headquarters No. 7 Battalion Nehru Regiment From there we marched and took up position near a tank which was 30 miles away from Popa I went along as Nursing Orderly with B Company I had no arms or ammunition. There we dug trenches

On March 16 night I heard a burst of tommy gun fire. After about half an hour we were attacked by two tanks and about 40 Gurkhas of the Indian Army Our men began to retreat, and the Company Commander told them not to run away but to remain firm and charge. Firing lasted for five minutes. After this the Company Commander was killed and we all surrendered. The strength of the company was 90 Including the wounded 47 were captured by the Gurkhas. I do not know what happened to the rest of the company I was one of those who surrendered

Cross examined by Counsel for Defence

I joined the I.N.A. in April 1943 At that time I was in A 1 camp at the Neesoon The part in which I was consisted of the hospital and non-volunteers. My hospital served the non-volunteers in the Neesoon Camp Every care was

Then we went back to Popa Hill reaching there at about 10 p.m. Then I along with another Madras were detailed to report to the Battalion Commander at Popa. I went there. The two jeeps were brought back to Battalion Headquarters.

Cross examined by Counsel for Defence

I did not know with what object the I.N.A. was formed. When I joined the I.N.A. it consisted of Indians and Malaysians. It was formed with the object of fighting but with my limited intelligence I do not know against whom it was intended to fight.

Sepoy Saidullah Khan, 2/9th Jat Regiment examined by Counsel for the Prosecution through the interpreter, stated

I enlisted in the Indian Army on December 12, 1940. I went to Malaya. I reached there on January 29, 1942. I was posted to Singapore. I was at Singapore when it fell. Later I joined the Indian National Army in September or October 1943. I was posted to No 7 Battalion Nehru Brigade. The Battalion Commander's name was Jagdish Singh. My Battalion went from there to Batu Pahat. It eventually arrived at Rangoon in April 1944. On arrival I went straight to hospital. I stayed at the hospital for nine or ten months. I rejoined my regiment on March 2, 1945. My battalion was in Popa Hill area then. The Commander was Chander Bhan. Major Gurbaksh Singh was commanding that Brigade. I recognise Major Gurbaksh Singh as Lt. Dhillon the accused before the court. My company then relieved A Company which was situated in the same area. My company then carried on patrolling duty. The object was to locate the position of American and British forces. We did this patrolling for nine or ten days. Then we returned to Brigade Headquarters.

When we came back to Headquarters my Platoon No 7 was detailed to accompany one Japanese Platoon and we were given orders by the Brigade Commander Gurbaksh Singh Dhillon to the effect that we were to work in co-operation with the Japanese Platoon. He also said that 60 or 70 men of No 7 Battalion were killed on the 16th or 17th of that month. He also said that we had to accompany the Japanese and obey their orders. He warned us that if any one of us deserted we would undergo the penalty of death.

Then our Platoon marched along with the Japanese platoon. From there we went to another village, about three or four miles away the name of which I do not know. On our arrival there, the Japanese ordered us to dig trenches. As we had no entrenching tools, we scratched up cover with our bayonets. The following morning the Japanese told us to cook our food and eat it and then at about 1 p.m. the village was fired upon. Then I and two others took cover in an A.R.P. trench in the village. When the firing ceased we found that we were left all alone—there was neither any Indian nor any Japanese troops. From there we surrendered to a Gurkha Battalion of the Indian Army.

Cross-examined by Counsel for Defence

The Indian National Army meant the Azad Hind Force. I was told by officers that the I.N.A. was the army of the Provisional Government of Free India. I joined the I.N.A. because I was ill and I had to do lots of fatigue for the Japanese with short rations and when a party went over to join the I.N.A. I also joined it with them. I was not actually in hospital but I was convalescent. The party to which I refer consisted of roughly fifty men. I am an illiterate man and do not keep any diary. I was told what evidence to give. That is how I remember these dates.

The name of my Platoon Commander was second Lieut. Adh Ram and I acted according to his orders. I do not know Japanese. I was given no order

He explained in the operational order the place which we were going to attack. The name of the place was Pynbin. Then he gave out the dispositions of the enemy troops and our own troops. I do not remember the final order which he gave. He said he would be at advance Brigade Headquarters at Seikteen and the rear headquarters would be at Popa Hill area. No movement took place that day,—I do not know why. The same evening the Adjutant came to the telephone to send a message. As the telephone was not in working order he sent for me and told me to detail two runners in order to take the messages to battalion commanders and I detailed accordingly. These messages were sent to No 1 Battalion and No 3 Battalion. The message was that there would be no movement of any kind that day. As far as I remember another conference was called the following day or the day after. This also was called by Lt Col. Sahgal and was attended by either the unit commanders or their representatives and the staff officers. Capt. Sahgal repeated the same operational order as in the previous conference and explained the various duties which were to be performed. As far as I could understand the object of this operational order was to attack Pynbin and drive the enemy out.

On the same evening the troops moved out to their respective positions. I went to a place about a mile in advance of Legyi village. When we arrived there I heard some firing. I remained in that place for 10 minutes or less. Then I was ordered to take 80 carts back to Legyi village and to take cover from aerial attack. I spent that night in Legyi village. I do not know where the Battalion Headquarters were. In the afternoon we got orders to shift from there to another place which was about 200 yards away. I remained there for the following night and the day after and then I escaped from there. I reported to 2nd British Division in Wulaung.

Cross examined by Counsel for Defence

I escaped back to the British Lines on April 1, 1945. When we arrived at 'opa Capt. Sahgal lectured to us. He told the men that any one who was unable to withstand the hardships of the campaign should tell him so. He also said that all such men would be sent back to Rangoon or to the back area. He asked if any of the officers or men wanted to go over to the other side. Nobody said that they wanted to go over to the other side. He said that any one of us was free to go if we wanted to. But I do not remember if he said that he would give those people safe conduct. After the lecture I found two men who were either physically unfit or unwilling to go. One man was physically unfit and the other man was frightened of air attack and they wanted to leave. They were sent back to Brigade Headquarters. I did not see them afterwards in the fight. Subhas Chandra Bose had not arrived in June 1943. He arrived shortly afterwards.

I remember the second lecture of Capt. Sahgal. I cannot quite remember the date—it was either the end of December 1944 or the beginning of January 1945. By that time I was aware that Netaji had assumed command of the army and that the Provisional Government of India had been proclaimed. It was in his capacity as head of the State and head of the Army that Netaji inspected my regiment. He gave a long lecture at the end of the inspection. He exhorted us to fight for the freedom of India. At that time I, along with the others, accepted that as the object for which we were fighting. He also said that we were representing the poverty stricken millions of India and that we should be content with small sums for pocket money and such rations as he could procure with the limited means at the disposal of the State. Netaji also said that the regiment would be moving to the front line soon and that we should do our duty by the country of our birth. For my part I accepted what Netaji said as being my obligation.

November 29

Havildar Ghulam Mohammad, 1/13th Frontier Force Rifles, examined by Counsel for the Prosecution through the Interpreter, stated.

I enlisted in the Indian Army in April 1927. I went to Malaya in April 1941. I was in Singapore when it fell. I was taken as P O W by the Japanese. I joined the I N A in October 1942. I was posted to No 1 Heavy Gun Battalion as Quarter Master. I was then transferred to No. 5 Guerilla Regiment in January 1944. I was posted to No 2 Battalion as Adjutant. The regimental commander was Lt-Col J W Rodrigues. The Second in Command was Major G S. Dhillon. The 5th Guerilla Regiment was in Bidadari Camp in Singapore. The regiment moved to Ipoh in April 1944. I was Regimental Adjutant. Lt Dhillon was attached to the 1st Infantry Regiment and went over to Jitra. In the month of July No 5 Guerilla Regiment marched from Ipoh towards Burma front. It assembled at Mingaladon Camp Rangoon, in January 1945. Lt-Col. Prem Kumar Sahgal was commanding the regiment then, whom I recognise as an accused before the court. In December when he took over command, he interviewed the officers of the regiment, to whom he spoke as follows: I have been ordered to take over the command of No 5 Guerilla Regiment. I hope that the officers will co-operate with me in the same manner as they have been doing with my predecessor and will enhance the name of the regiment in the same manner as they have been doing hitherto and will help in raising the standard of discipline amongst the troops.

No 5 Guerilla Regiment was renamed No 2 Infantry Regiment. Two additional companies were attached with this regiment, one mortar company and the other machine gun company and instead of guerilla tactics, they became a regular fighting force. The regiment was composed of three battalions with one S S Company. In each battalion, there were five companies.

In the end of January 1945, Netaji Subhas Chandra Bose came and inspected our regiment. After he had taken the general salute, he addressed the regiment as follows: Last year for the first time the I N A were in action against the enemy. Their deeds were so glorious that they were beyond my expectations and won the praise of both friends and foes. Wherever they fought against the enemy, they inflicted a crushing defeat on them. From the Imphal Front, we had to bring back our forces as a tactical move (and without being defeated by the enemy) without fighting the enemy, due to bad weather and certain other handicaps. Now, we have tried to overcome those difficulties but everyone should remember that our army is a revolutionary army. We are not so well equipped with arms, equipment and man-power as our enemies are. The enemies have decided that they will fight their first battle for the defence of India in Assam. They have made India's Stalingrad in this area. This year will be a decisive year for the war. The fate of the freedom of India will be decided near the hills of Imphal and on the plains of the Chittagong area. Last year some of our men had joined the enemy. This time I do not want that a single man should go over to the enemy when they go to the front. Therefore, if anyone thinks that he is incapable of going to the front due to weakness or for any other reason, he should report to his Regimental Commander and arrangements will be made for him to be kept at the base. I do not wish to paint a very rosy picture to you. You will have to face hunger, thirst, other hardships and even death when you go to the front. As the enemy has made utmost preparations, we shall also have to mobilise all our resources. In addition to the present slogan of the 'I.N.A., which was "*Chalo Delhi*" another will be added to it. That will be

khun, khun aur khun (Blood, blood and blood) That is to say we shall shed our blood for the freedom of the 40 crores of people of India. We shall similarly shed the blood of the enemy for the freedom of India. The slogan for Indian civilians who are in the south will be *karo sab nichkhar aur bana sab faqr* (Sacrifice everything and give your all). At the end of his lecture he himself shouted the following slogans *Inqilab zindabad chalo Delhi, khun, khun aur khun*. These slogans were repeated very loudly by 2000 men of the No 2 Infantry Regiment as well as by the spectators. The lecture was a lengthy one but this is the gist of it.

Afterwards a Regimental Conference was called by Col. Sahgal. This conference was attended by the Battalion Commanders and the Staff Officers. He said that in the near future our regiment will go to the front in the Kyauk Padaung area. He issued administrative orders for the move. On January 28 the advance party of the regiment left Rangoon. Later on orders for move to Kyauk Padaung were cancelled and we were told to go to Popa area. And this advance party left for Popa. I left on February 13 for Popa. Lt-Col. Sahgal was our Regimental Commander. We arrived at Popa on the 25th or 26th of February. The regiment assembled at Popa by the third week of March. Col. Shah Nawaz Khan was the Divisional Commander. The headquarters of the Second Division was in the Popa hills area. The units were disposed of in various sectors and were doing patrol duties. As Adjutant, I was Staff Officer to the Regimental Commanders and my duties were in connection with the office routine, promotion and discipline. Reports from patrols and from other units were being received from time to time. Officially I was not concerned with the operational side of the reports but I happened to have seen some of them. One report dated March 4, 1945, from the first battalion was to the effect that one of their patrols had an encounter with one patrol of the British regiment. The name of the leader of the patrol was sub-officer Abdullah Khan. In the patrol report it was mentioned that two jeeps and one wireless set had been captured by us. It was further mentioned that two B.O.R.s of the enemy were killed and that one of our men was slightly wounded. One of those jeeps was sent over to Divisional Headquarters and the other was kept in Regimental Headquarters. The jeep which came to Regimental Headquarters was being used by the Regimental Commander and staff officers. The Regimental Commander was Lt.-Col. Sahgal.

As far as my knowledge goes the duty of No 2 Infantry was to take the defence of Popa Hill area and on being ordered it was to attack the British troops and continue the advance towards India. This disposition of No 1 battalion was about one mile north from the Popaywa village. Third Battalion's disposition was two miles east of Popaywa village. The Second Battalion was in reserve about one mile west of Popaywa village.

About March 19 a conference of Battalion Commanders and Staff Officers was called by the Regimental Commander Lt.-Col. Sahgal. He spoke as follows.

I have been ordered to send two companies to raid Pynavin. He gave necessary instructions and ordered No 2 Battalion to detail two companies. The date for the advance was March 14. With these two companies were the Regimental Commander himself, the regimental medical officer and myself. Before we left the Divisional Commander Col. Shah Nawaz Khan came to see us all. He said that all eyes were fixed on the members of No 2 Infantry. "This is the first time that two companies of the Second Battalion are being sent to the front. From my experience gained during the last year's battle I can say that the enemy is very cowardly. I hope and trust that you will not bring any blot on the name of India in any way. My prayers are with you. Then we marched and spent the night in Setsetyo village. We then arrived at Myene on the evening of the 15th. From there one column of a Company was sent to west of Tounggon under

an I N A officer to raid Under his command were one Japanese officer and two Japanese sections One platoon was sent to east of Tounnggon on the roadside to draw the enemy's attention towards them In this platoon was one Japanese Section which was placed under the command of the Platoon Commander who was an I N A officer They were ordered to return to the position of assembly by 4 a m the following morning They left column and reported back at 4 a m that they had not encountered any enemy The right platoon reported that when they arrived east of Tounnggon they were being led by the Japanese Section who knew the area and when firing started unexpectedly from the front the Japanese ran away The Commander of the I N A admonished them and ordered them not to run away He then took out his pistol and fired a few shots towards the enemy He reported that on hearing the firing the enemy had left their position and run away Because his role was only to divert the enemy's attention, he did not consider it advisable to follow the enemy and had therefore come back One man from that platoon was missing I had not gone with this platoon What I have stated is what the Platoon Commanders reported on their return in my presence An official report of this action was made to Divisional Headquarters on our return to Popa Hill by Col Sahgal

On (roughly) about March 26 or 27 I was in regimental H Q Lt-Col Sahgal and other staff officers of the regiment had gone out on duty I was indisposed in my quarters At about midnight I was awakened by someone who reported that three men from No 1 Battalion had been placed in quarter guard I only know the name of one of these three and that was sepoy Mohammad Hussain I was told that this man had tried to desert and therefore had been placed under arrest in quarter guard So far as I know, on the evening of the 28th when Col Sahgal returned from his duty, No 1 Battalion Commander brought these three men before him It was stated about sepoy Mohammad Hussain in my presence that he had tried to desert and had instigated others to desert, and the other two were charged with conspiring to desert Col Sahgal asked them whether they were guilty or not guilty After some evasion Mohammad Hussain admitted his guilt, the other two pleaded not guilty I was told by Col Sahgal to ask the Liaison Officer to investigate this case

On the morning of March 29 these three accused were again brought up The Battalion Commander read out the same charges to them and Col Sahgal asked them whether they pleaded guilty to the charges or not Muhammad Hussain pleaded guilty, the other two pleaded not guilty Three separate charge-sheets were prepared I read all the three Then these men were sent back to the Divisional H Q I was present at the office and saw them go out accompanied by the regimental second-in-command and the Battalion Commander Between 2 and 3 p m I was in my hut when the regimental second-in-command and the Battalion Commander came back Their names were Major Negi and Lieut Khazin Shah Then they went away I saw Mohammad Hussain in the evening at about 4 or 5 o'clock when he passed in front of my room He was accompanied by 2nd Lieut Sardar Mohd, Adjutant of No 1 Battalion, and 2nd Lieut. Aya Singh

On March 28 another conference of Battalion Commanders and Staff Officers was called by Lt-Col Sahgal I was present at the conference Lt-Col Sahgal said that an attack was to be launched in Pynbin area The Japanese and the 4th Guerilla Regiment were to attack Pynbin from the West and the 2nd Regiment was to block the roads leading to Pynbin from the East These orders were subsequently cancelled Another conference was called on the 29th I was present there Lt-Col Sahgal said that instead of 2nd Inf Regiment one Company from No 3 Battalion, and No 1 Battalion were to take part in these operations. This move was to be carried out in two phases on the evening of

29/30th One Company of No 3 Battalion was to go to Kabyou and No 1 Battalion was to go to Seikteen area. On the evening of the 30th No 1 Company of No 1 Battalion was to block the Welaung-Seikteen road. The Company going to Kabyou was ordered to report to Japanese troops which were located there. No 2 Company was to block the Welaung Pynbin road. Two platoons of No 3 Company were to perform guerilla activities east of Pynbin and the third section Company was to act as a standing patrol north of Seikteen. Two support Companies were sub-allotted to the Rifle Companies.

At 10 p.m. on the 29th Lt Col Sahgal accompanied by a reconnaissance party of Regimental Headquarters and reconnaissance parties from each Company of No 1 Battalion and a Japanese Liaison Officer left for Seikteen. They were followed by No 1 Battalion and Regimental Headquarters to which I was attached. I was in charge of Regimental Headquarters. When I arrived near Legyi I saw the rear guard of No 1 Battalion sitting down because my position was with the main body I passed on. When I proceeded a little further I noticed that the main body was also sitting down. I also sat down there.

After about three hours Lt-Col. Sahgal arrived. He told me that when his cars were proceeding to Seikteen they were heavily fired upon from a distance of about 25 to 30 yards and from a front of approximately 300 to 500 yards that in accordance with the reports which he had received earlier he was under the impression that there were no British troops in that area that on being fired upon the cars stopped and all the men came out of the cars the men shouted that they were I.N.A. men and asked the opponents to stop firing the Japanese Liaison Officer had also shouted in Japanese that he belonged to Hikari Kikan but on this the volume of firing had increased that the enemy had been firing into the air, that if even one burst was fired straight the whole lot of them would have got killed that they had to leave all cars and run back to safety that later on one Company of No 1 Battalion attacked the enemy that when our troops arrived there they saw that some of the enemy were sitting in our cars and were talking amongst themselves, that by that time the enemy had seen our movements and had shouted that I.N.A. men had come, let us run away that at this time the platoon which was on the left attacked them, that the enemy got into their lorries and drove away leaving our three cars behind and that they found everything intact except one bag and a map case belonging to himself (Lt. Col Sahgal). Then I was ordered by Lt-Col. Sahgal to take the Regimental Headquarters back to Legyi. I did so.

No 1 Battalion followed and took up defensive position at Legyi. One day I saw Colonel Shah Nawaz Khan who was divisional commander. On March 31 Legyi was bombed by twelve British aeroplanes continuously for three or four hours. Then on April 1st or 2nd I came to know from the reports received that one British brigade was trying to encircle us. They had also started shelling us heavily on April 1st and 2nd. On April 3 one British battalion had captured our B echelon area which was in the rear. At noon on April 3 Col Sahgal ordered to keep ready one reserve company. Then the Platoon Commander reported that two platoons from the reserve company had already gone over to the enemy. After further consideration he ordered that two platoons should be raised by thinning out men from the defensive positions. After the shelling of Legyi there was a certain amount of desertion. Col. Sahgal decided that one officer from the 1st battalion should take over command of these three platoons and brigade liaison officer would be attached to him, and their role was to take and reoccupy the B echelon area. After thirty minutes the company commander came back and reported to Colonel Sahgal, when I was present, that his men had attacked the enemy with such vigour and accompanied with shouts of Chalo Delhi and Jay Hind that the enemy had left and run away. After some time news was received

that the Battalion Commander, Khazin Shah, with two hundred officers and men had deserted. Col Sahgal and myself were present at that time. The same night Col Sahgal told me that he had telephoned to the Divisional Commander but could not get him and therefore he had decided on his own initiative to withdraw to the Popa area. Next morning we arrived at Popa. This was on April 4. We remained in Popa for eight days. We did nothing in particular but on two occasions we were bombed by British aircraft and the units remained in their position.

On April 9, a conference was called by Lt-Col Sahgal, which was attended by regimental staff officers and the battalion officers. I was present. He told us that the regiment would now move from Popa to Taungwiny and that we had to evacuate Popa between the 14th and 16th April. On the evening of the 12th we received orders to evacuate Popa by 10 p.m. We then left Popa and marched towards Taungwiny. It was learned on the way that Taungwiny was occupied by the enemy. Colonel Sahgal then ordered us to go to Prome. On the 26th or 27th April we moved north of a place called Allanmyo to a small village called Myew. I was ordered by Lt-Col Sahgal to go towards Allanmyo and get necessary information for withdrawal. I had gone for about two miles when I saw that firing was being exchanged from both sides. I thought it was no use going forward further and so I returned back to the camp and reported to Lt-Col Sahgal that Allanmyo was occupied by the enemy. Col Sahgal after consulting a map selected a place called Magyingang as a defensive position. I have already stated that firing was being exchanged and the Japanese were at Allanmyo. We arrived at Magyingang at night. Magyingang is surrounded on three sides by the hills and on the fourth side there is a river. Col Sahgal ordered pickets to be established on the three hills.

Next morning a conference was called by Col Sahgal, which was attended by all officers including sub-officers. I was also present. He said that Allanmyo was already occupied by the enemy and that the main road to Prome was blocked by the enemy and that there were three courses open to us: one was that we should fight our way through the enemy lines as we did before, the second was to disguise ourselves as civilians, and the third was that we should become prisoners of war. All the officers then requested that they should be given an hour's time to consider the matter. After one hour they decided unanimously to become prisoners of war. After this Colonel Sahgal wrote something on paper and handed it over to the second-in-command of the No 2 Battalion, and detailed another officer to go with him, with instructions to hand over the note to any officer of the Allied forces, and told the officers to communicate to all the men about the decision which had been taken. He also ordered the pickets on the hills to withdraw.

After that, news was received a little before 1 p.m. that some Gurkha troops were advancing towards us to the north. Col Sahgal went forward and told us not to get excited or fire on them. After five or six minutes, we were fired on from the north. At the same time from the south, we saw one Gurkha officer and a Battalion Commander coming towards us. Col Sahgal met them, and he then ordered us to assemble together into one party. We did this. All the troops then surrendered.

Cross-examination by Defence

After the decision to surrender was taken and Lt-Col Sahgal had written a note, he handed it to a man named Capt Banta Singh. The officer who accompanied Capt Banta Singh was Second Lt Umrao Singh. Col Sahgal told me that he had written that they wished to become prisoners of war. As

I mentioned before, a period of an hour was allotted for discussion regarding the contents of the letter and it was unanimously decided that we would become prisoners of war. Col Sahgal told all officers 'I am writing this to the Allied Commander that we wish to become prisoners of war'. While Col. Sahgal had the letter in his hand he told every one 'I am sending this letter to the Allied Commander mentioning that we intend to become prisoners of war. I am sorry I do not know what more was written in that letter but Col. Sahgal mentioned that if the Allied Commander did not accept our offer of becoming prisoners of war then we shall fight the Allied troops'. Bant Singh and Umrao Singh with a Gurkha officer came back.

Capt Sahgal took command of the regiment in December 1944 at Mingaladon Camp, Rangoon. After having taken over command, he addressed each battalion individually. I have attended all the lectures given by Col Sahgal and I was present in the capacity of a staff officer. He mentioned that this was a great and hard fight and as compared to the enemy, we are short of men and material. Those men who are weak, cowardly or do not intend to fight should report to their battalion commanders, and that report should be forwarded to me through their battalion commanders.

Col Sahgal said at Popa that those who did not wish to stay in the Indian National Army and wished to go over to the enemy should tell him. He will then make arrangements to send them in one party to the enemy but they will not be permitted to take any arms or papers with them. I do not want that men should desert in dribblets afterwards. As far as I understand, it was Capt. Sahgal's intention that after the party went over men should not go over in dribblets and so cause demoralisation. A report was made by the battalion commander and No 3 battalion commander to the regimental commander that the two officers Narendra Singh and Ismail, intended to desert. Capt. Sahgal sent for them. They were questioned by Lt Col. Sahgal in my presence. Lt Col. Sahgal told them that if they would apologise and promise not to attempt to desert again, he would excuse them and transfer them to another battalion. Five persons, of whom Ahmad Khan was one, all belonging to No 2 battalion, were produced before Col. Sahgal because they were intending to desert. They pleaded guilty. They said that if they were excused they would fight as true servants and they should be put to a test. They were excused. I know Havildar Ganga Saran. The First Battalion Commander reported that he had refused to obey his orders. He was a sub-officer in the I.N.A. He was produced before Col. Sahgal for this offence and was tried and sentenced to death. He was afterwards pardoned and released.

In August 1943 I was in Neeason Camp. Captain Shah Nawaz came to address the Heavy Gun Battalion there. He said that the I.N.A. had been formed for the liberation of India and it would fight not only British imperialism but also those who would put obstacles in the way of India's freedom or any other party which wished to subjugate India. He also said, 'I belong to a family which has rendered great services to the British Government. Just as Hazrat Imam Husain waged a war of right and justice in the same way I have decided and am determined to sacrifice my life for the independence of India. He said that whoever is an Indian has the right to be free. As an Indian it is everybody's right to aspire for freedom and fight for it. In the end he said that whoever set eyes on India would be made blind by him.'

In February 1945 I was present at a meeting at Popa addressed by Capt Shah Nawaz. He said 'Some men of the 4th Guerilla Regiment have gone over to the enemy which has pained Netaji a great deal. Netaji himself wanted to come to Popa but I have assured him that I will come personally and appreciate the

situation. At present the eyes of the whole world are on the I N A. If we cannot win freedom this time we shall not be able to win it for another hundred years. Therefore, tell me which of you are 100 per cent prepared to sacrifice your lives under the command of Netaji".

Re-examined by Counsel for Prosecution

Lt-Col Sahgal sentenced Havildar Ganga Saran to death. Afterwards he pardoned him and released him. The circumstances were that after consultation with No 1 Battalion Commander and on the promise that he would work well in the future, he was pardoned and released.

Sepoy Allah Ditta, 5/7th Rajput Regiment, examined by Counsel for the Prosecution through the Interpreter, stated

I joined the Indian Army on December 4, 1932. I enlisted at Jhelum and went to the training Battalion at Fateghur, that is the training centre of the 7th Rajput Regiment. I went with my Battalion to Hongkong in Malaya on September 27, 1940. I was taken a prisoner of war by the Japanese on December 25, 1941, in Hongkong. After that I was put in Matau Chung Camp in Hongkong. Six months later we were transferred to Canton.

On December 11, 1943, I joined the I N A at Singapore. I was posted to 1st Battalion 5th Guerilla Regiment, which was at Bidadari Camp. Then the Regiment moved to Ippu and ultimately came to Popa Hill on February 24, 1945. Capt Jodh Singh was commanding the Battalion at that time. The Regimental Commander was Col Sahgal. After a short time Capt Jodh Singh was transferred to Rangoon. He was replaced by Khazin Shah.

I knew Sepoy Mohd Hussain. He belonged to a British Regiment before. Mohammad Hussain belonged to Headquarters Company, Intelligence section. I know Jagiri Ram. On March 26, 1945, between 2 and 3 p m Mohammad Hussain came to me and told me that he intended to desert that day. I told him that that day was not suitable for escaping, that some other day would be more suitable. He went back. At sunset on that day I was called to Battalion Headquarters. Then I went to Company Headquarters and from there I was taken to the Brigade Headquarters and there I saw Jagiri Ram, Mohammad Hussain and Khazin Shah. After that Khazin Shah gave me a beating and told me that I was disloyal to the I N A and that I was one of the men who intended to escape and said "Muslims like you betrayed even the Turks". Then I was shut up in the quarter guard at Brigade Headquarters. Next day I was brought before Colonel Sahgal and statements were taken individually. Colonel Sahgal asked me if I intended to escape. I said "No, I did not intend to escape." I mentioned to him about Mohammad Hussain's visit to me regarding his intended escape. Then I was sent out. Khazin Shah ordered Ghulam Mohammad, the Brigade Adjutant, to enquire and question Allah Ditta and six others, who wished to escape. Ghulam Mohammad detailed Aya Singh to beat us and question Allah Ditta and others who intended to escape. Ghulam Mohammad told Aya Singh to find out from Allah Ditta regarding the six other persons who intended to escape. On March 27, 1945, I was beaten and interrogated by Aya Singh. I stayed there on March 27 and 28.

On March 28, our Battalion was to move to Legyi. Khazin Shah told Ghulam Muhammad to inform Colonel Sahgal that if these men were not punished, he, Khazin Shah, would give up command of the Battalion. I was present then.

On March 29, Major Negi and Khazin Shah took me before Colonel Shah Nawaz to the Divisional Headquarters. Three of us were present—myself, Jagiri Ram and Muhammad Hussain, besides Colonel Shah Nawaz, Major Negi,

Khazin Shah and two sentries the sentries stayed out and we went in. I saw three different crime reports had already been made regarding us. Major Negi took the crime reports and handed them to Col. Shah Nawaz who read them out separately to each one of us. First Jagiri Ram was questioned by Col. Shah Nawaz Khan. There myself and Jagiri Ram were present at the same time. Col. Shah Nawaz enquired from Jagiri Ram if he had intended to desert. He replied No I did not intend to desert. I was questioned next and I said I did not intend to desert. Then Col. Shah Nawaz said that I was an N.C.O. and Mohammad Hussain had approached me and I had not reported the matter. I said that it was my fault.

Then he questioned Mohammad Hussain as follows: 'Did you intend to desert and make others to desert with you?' Mohammad Hussain replied No I did not intend to desert. Col. Shah Nawaz said 'Speak the truth.' Muhammad Hussain said I had some difficulties and therefore I intended to desert. But no inquiries were made into his complaints. Mohammad Hussain was told by Col. Shah Nawaz: 'You are sentenced to death by shooting, because you intended to desert yourself and were persuading others to do the same. Therefore you are not pardoned.' I heard Col. Shah Nawaz say 'Put up the case before the Regimental Commander. (Note by the court: Witness uses the words in English.)' Then all three of us were sent out. We waited there for ten minutes and were brought back to brigade headquarters. Mohammad Hussain, Jagiri Ram and myself came together back to Brigade Headquarters. Mohammad Hussain and myself were put back in the same cell in which we were before and Khazin Shah took away Jagiri Ram. The same day at about 5 p.m. Sardar Muhammad, adjutant of our battalion, and Aya Singh took away Mohammad Hussain. I have never seen Muhammad Hussain since then.

I did quarter guard for three or four days. Then I was produced before Major Negi. I was reduced to the ranks and he said 'You will have to go to Rangoon.' Then I was taken to a Concentration Camp in Popa. On April 7, 1945, along with 16 other men I was despatched to Rangoon by march route. We were under arrest, guarded by sentries. We reached Magwe. On April 19, 1945, the British attacked Magwe and the sentries guarding us ran away. I reported to the British.

Cross-examined by Counsel for Defence

No decision was arrived at either in my case or in the case of Jagiri Ram. It is true that all that Col. Shah Nawaz Khan said was: 'You deserve to be shot. Rebels like you will be sentenced to death by shooting. You yourself wanted to escape, secondly you have tried to persuade others to escape, therefore, you are a rebel to the I.N.A. and sentenced to death by shooting.' I saw Col. Shah Nawaz Khan write something on the crime report. How could I read the crime report without picking it up from the table. I do not understand English.

Sepoy Jagiri Ram, 15th Field Ambulance, I.A.M.C. examined by Counsel for the Prosecution through the Interpreter stated:

I joined the Indian Army in December 1937. I went to Malaya with my unit in 1940. I was in Singapore when it fell. I subsequently joined the I.N.A. in October. I do not remember the year but it was the same year in which Singapore fell. Singapore fell on February 15. I do not remember the year. When I joined the I.N.A. I was posted to Bidadari Hospital as nursing sepoy. After that I was transferred to the 5th Guerilla Regiment. From Rangoon the regiment moved to Popa Hill in the third month. At the time I was in Popa my Battalion Commander was Khazin Shah and the Regimental Commander was Capt. Sahgal. The Divisional Commander was Capt. Shah Nawaz Khan.

I knew Mohammad Hussain and Alla Ditta. Mohammad Hussain, myself and a Garhwali talked about escape when we were in Popa Hill area. While we were talking of escape Khazin Shah sent an orderly and ordered us to report to Battalion Headquarters. After that Khazin Shah started beating us and said that we wanted to escape. He beat me, Mohd Hussain and the Garhwali, and asked me to speak the truth and tell him the names of the persons who wanted to escape. He let the Garhwali go, but caught hold of Mohd Hussain and myself. Mohd Hussain said that he had mentioned to Jagiri Ram and Alla Ditta jokingly about escape. Khazin Shah questioned me and asked if they mentioned this jokingly. I replied that I had no proof of his intention to escape, but he mentioned it jokingly to me. Mohd Hussain and myself were tied to a tree near the Battalion Headquarters while Khazin Shah was questioning us. Khazin Shah questioned me as to who was trying to escape and I said that I did not know the name of anyone who was trying to escape. Then Mohd Hussain was questioned. He also said that he did not know anything. After sunset Khazin Shah took Mohd Hussain and myself to Brigade Headquarters. When I was taken to Brigade Headquarters, Mohd Hussain, Khazin Shah and one sentry were with me. Brigade Headquarters were near a *nullah*. On arrival at Brigade Headquarters Khazin Shah went to a telephone and after that Alla Ditta also arrived at the *nullah*. After that all three of us, Mohd Hussain, Alla Ditta and myself were put in the Quarter Guard and our hands were tied. On the following day we were brought before Col Sahgal. Col Sahgal questioned me as to whether I intended to escape. I said no, I did not intend to escape. During this conversation with Capt Sahgal other people present were Major Negi and Khazin Shah. Col Sahgal asked me if I had reported to anyone after Mohd Hussain had mentioned to me about escape. I said I did not know anything about Mohd Hussain and I did not report to any N C O, I worked with my Medical Officer. Then we came out of the room and went back to the Quarter Guard. Then Lt Aya Singh of Brigade Headquarters gave each one of us a beating and said that he would release us if we would tell him the names of the people who intended to escape. I continued to say that I did not know. Next day we were taken to Divisional Commander, Shah Nawaz Khan. We were accompanied by Major Negi, Khazin Shah and a sentry. All three of us, myself (Jagiri Ram), Alla Ditta and Mohd Hussain were lined up before the Divisional Commander. The Divisional Commander asked me to speak the truth whether I intended to escape. I denied that I intended to escape. Capt Shah Nawaz Khan asked us why we did not report the matter. I said that I did not know anything about it, and I did not intend to escape. He asked me if there was any officer or N C O near me. I said "No I was working with my Medical Officer." Then Capt Shah Nawaz Khan asked Alla Ditta "When Mohammad Hussain had talked to you about escaping, did you report to anyone?" Alla Ditta said "I do not know anything about Muhammad Hussain's escape. I thought it was a joke." Capt Shah Nawaz Khan then said to Alla Ditta "You are an N C O. Why did you not report?" Alla Ditta begged his pardon and said that he did not know anything about Mohammad Hussain. Then Capt. Shah Nawaz Khan questioned Mohammad Hussain and Mohammad Hussain replied that he was in difficulties and that he intended to escape and asked to be forgiven. Captain Shah Nawaz Khan then told him "You are not for our country you are our enemy. I will give you death by shooting." Then Mohammad Hussain asked for forgiveness and said he was prepared to go anywhere he was ordered. Capt Shah Nawaz said nothing to this. All three of us were then sent out and we were taken to Brigade Headquarters, accompanied by Major Nagi and Khazin Shah.

I moved towards the battalion with Khazin Shah and sub-officer Barfi Singh. In the evening an orderly took me to Battalion Headquarters. Mohd Hussain was there. Khazin Shah and Aya Singh were also there when I arrived. Khazin Shah told me 'You will shoot Mohammad Hussain, because you are one of the men who were trying to escape with him. I declined and said 'I will not shoot him and that I did not know how to fire a rifle. Khazin Shah told me again 'If you do not shoot Mohammad Hussain you will be shot yourself'. I still refused and he drew his pistol. I refused again and Aya Singh got hold of a rifle. He put the rifle to my shoulder and put my finger round the trigger. Khazin Shah told Aya Singh to give the order to fire. There were three of us: one Sikh, one Tamil and myself. Mohammad Hussain was blindfolded by Aya Singh. He was made to sit on the ground with his back against a tree stump and his hands were tied behind his back. Aya Singh ordered me to fire and all three fired. Mohd Hussain died there. Khazin Shah ordered Aya Singh to give the order to fire and Aya Singh gave it. Khazin Shah told me to report to my company and not to come to the Battalion Headquarters. That evening we marched off to Legyi. We stayed at Legyi two or three days. Then I went over to the British.

November 30

(Major Ram Lall Tripathi, R.I.A.S.C. was sworn in as Interpreter)

Cross examined by Defence Jagiri Ram stated

I come from Jullundur. I have no education. I do not know how to read and write. I can write my name in Roman Urdu but I do not know the English language. In the month of August I made a statement here in Hindustani which was written in English and was type-written and I signed it. I signed it in the belief that it contained what I had said. The statement was read over to me by the Subedar before I signed it. The type-written statement was read out to me in Hindustani. No one told me what to say before I came into the court.

I have had no training in the use of weapons. I joined an ambulance unit and my job was to bandage patients and make their beds. Before I joined the army, I worked as a servant and a labourer. On joining hospital I was trained in the work of bandaging patients and making their beds. I had nothing to do with the fighting part of the army. Except when the patients were brought into hospital I had nothing to do with the men of the fighting units. Mohammad Hussain and the Garhwali I have referred to were members of the fighting units. At the time of the conversation they were not sick. I did not know them before the conversation but they were living in the same Company. I had never been to Burma before. Before joining the I.N.A. we were given very hard fatigues by the Japanese in connection with the loading of coal at the ports day and night. I do not remember any dates. I do not understand dates. I do not know English months or years.

I do not know the name of the Garhwali to whom I have referred. I know he was a Garhwali because he lived with us and he spoke Garhwali. I had never talked either to the Garhwali or to Muhammad Hussain before the day Mohammad Hussain joined Company Headquarters. I had never spoken to the Garhwali before that day in the *mullah* and from that day's conversation I say that he was a Garhwali.

I came to know Mohammad Hussain in the Company. He used to live with me at Headquarters. He used to speak in Punjabi with me. He used

to live with me, surely I knew him. I cannot give a long description of him except his physical description. I do not know anything else about him. It was by chance that Muhammad Hussain and I got together and the Gahrwali arrived in the meantime. Then we talked about running away to the British. The people who used to go out on patrols said that the British were about 20 miles from where we were. We were considering the matter of running away from there. At the time I had been arrested I was worried about my life. When I was arrested I said that I never intended to run away because I would have been also shot otherwise. I knew Lt Aya Singh because he was in my Company. I know he is alive. I saw him in Jagarkacha and Chittagong. The last time I saw him was in Chittagong where he arrived two or three days after my arrival there in about May last.

I saw Capt Shah Nawaz Khan at Divisional Headquarters. There were other orderlies and sepoy there. I do not remember having seen any officers other than Capt Shah Nawaz Khan. I do not know the English word "crime". I know the word "report" in the sense of making a report to somebody. I do not understand the words "crime report" which are written on a piece of paper now shown to me.

There was no need for anybody to teach me the meaning of crime report when I was about to be produced. I was told that a crime report would be put up against me and that we three men would be brought before Capt Shah Nawaz Khan. No announcement was made before me in respect of anybody except Mohd. Hussain being ordered to be shot. Alla Ditta was not present with us when we conferred in the *nullah*. When Muhd Hussain gave evidence I learnt that Allah Ditta was with us.

I was given a rifle at the time of the shooting of Mohd Hussain. I do not know any weapons other than a rifle. The rifle was put on my shoulder in the aiming position by Aya Singh. I do not know the names of the Tamil and the Sikh who were present at the shooting of Mohd Hussain, but they were both present on the scene when I arrived. I held the rifle with the help of Aya Singh. The rifle was pointing to Mohammad Hussain. He was sitting on the ground five yards away. I pressed the trigger when, 1, 2, 3, was said. Three shots were fired but I do not know which shot shot him down. I did not go to Mohammad Hussain's body to see how many shots had penetrated it.

Lance-Naik Sardar Mohammad, 1/H K S R, examined by Counsel for the Prosecution through the Interpreter, stated

I enlisted in the Indian Army on December 13, 1938. I went to Malaya in January 1939. I was posted to the 6th Battery of the 1st A A Regiment. I was in Singapore when it fell. I joined the I N A in August 1943. My rank was Lance-Naik. I was commissioned in December 1943. I was posted to the 5th Guerilla Regiment. The regiment went to Ipoh. The regiment reached Rangoon ultimately on January 22, 1945. From Rangoon the regiment went to Popa on March 24, 1945. I was the adjutant of the 1st Battalion. The Battalion Commander was Lt. Khazin Shah. I knew Aya Singh. The 5th Guerilla Regiment was in the 2nd Divisional Headquarters.

I knew Mohammad Hussain. On March 27, Lt Khazin Shah sent for the runners. On arrival of the runners he ordered them to bring the following men to the Battalion Headquarters - Sepoy Mohammad Hussain, Lance-Naik Allah Ditta, Lance-Naik Mohammad Shafi, sepoy Jagiri Ram and sepoy Gobbru Singh. Mohammad Hussain was a sepoy in the Indian army before he joined the I N A.

Those men did come. Khazin Shah told me that these men intended to run away. He interrogated them and occasionally beat them. He further told me that he was going to Brigade Headquarters that evening to talk about these men.

and he went away. He came at 8 p.m. and said that he ordered the Company Platoon Commander to bring these men to Brigade Headquarters and they had not arrived there yet. He asked me to send runners to get these men. I sent a runner. Lt. Khazin Shah then ordered me to go and take these men to Brigade Headquarters. They were taken to the Brigade Headquarters. A sub-officer, whose name I do not know, and I took them there. I met Lt. Khazin Shah on the way and I handed over these men to his charge. He let off Lance-Naik Mohammad Shafi on the spot because his Platoon Commander had recommended him and I came back. He said that Mohammad Hussain had been sentenced to be shot. Nothing was said about others but Jagiri Ram was with him at the time. He asked me to go to Ghulam Mohammad, the Brigade Adjutant and ask him whether Mohammad Hussain was to be shot under battalion arrangements, or brigade arrangements. If the order were for Mohammad Hussain to be shot under battalion arrangements I was to bring back Mohammad Hussain with me. I was also asked to bring sepoy Mohammad Ibrahim who had been released from the quarter guard. I received instructions that Mohammad Hussain was to be shot under battalion arrangements and on the same day I brought him back with me to battalion headquarters. I also brought back Sepoy Mohammad Ibrahim and Aya Singh came with me. I conveyed these orders to Lt. Khazin Shah. Lt. Khazin Shah then ordered me to arrange for the execution of Mohammad Hussain. He asked me to detail ten men to pick up axes and shovels. I detailed those men to dig a grave. I know that grave was dug. I was then ordered by Lt. Khazin Shah to take Mohammad Hussain to the edge of a nullah. Mohammad Hussain was taken to the edge of the nullah. Lt. Khazin Shah second Lt. Aya Singh and Havildar Major Govind Singh, some sepoy and myself went with Mohammad Hussain to the nullah. Lt. Khazin Shah ordered Mohammad Hussain to be tied to a tree and also ordered that he should be blindfolded. I passed on the orders to sub-officer Govind Singh who carried them out with the help of two other sepoy. After this Lt. Khazin Shah called two men out of the fatigue party to shoot Mohammad Hussain. They were both sepoy, one was a Tamil and the other a Sikh.

Khazin Shah ordered that Jagiri Ram would also fire on Mohammad Hussain. The three men stood in a line facing Mohammad Hussain and Khazin Shah told Aya Singh to give the order to fire. Aya Singh hesitated. Khazin Shah once again told him to give the order to fire. Aya Singh gave the order. Kneeling Fire. All the three sepoy fired a round each on Mohammad Hussain. Mohammad Hussain was killed. His body rolled over sideways. Khazin Shah then ordered me to send Abdul Hakim to arrange for his burial. I passed on these orders to Abdul Hakim. The battalion was to move the same day on an operational role and did so. No casualty report was sent. The sending of a casualty report was part of my duties. I did not make a casualty report because night had fallen and we had to march the same night. On April 3 I escaped and reported to the allied forces, I escaped from Legyi village.

Cross-examined by Counsel for Defence

The night that Mohammad Hussain was shot we moved to Legyi. At that time we were preparing defence and were also being shelled from the air and I did not have time to prepare a casualty report of Mohammad Hussain's death. On April 1, 1945 I did not take a casualty report to Capt. Sahgal. I do not know if any was sent. I knew Jagiri Ram from the day he was arrested and taken to Brigade Headquarters had been posted to the regiment only three or four days previously and that is why I did not know Jagiri Ram. I knew that he was a non-combatant nursing orderly. Aya Singh was helping Jagiri Ram to fire the rifle. He was standing near

him Jagiri Ram fired with help. Lt. Khazin Shah ordered that Jagiri Ram would also be one of the firing squads I could not see very well but the firing squad had been ordered to adopt the kneeling position and they did kneel a bit I do not remember whether Jagiri Ram was standing or in the kneeling position I was between 12 and 15 yards away when Mohd Hussain fell I went away after giving orders to Abdul Hakim I went near Mohd Hussain and found that he was dead He had three shots in him The shirt covering his left side of breast was torn and from the amount of tear I considered there were three shots. I was not present at his burial

Questioned by the Judge Advocate

When I found that three shots had gone into him and that he was lying on a side I inferred that he was dead The firing was about 8 to 10 yards away from Mohd Hussain The shooting of Mohd Hussain occurred at about dusk I did not see any blood on Mohd Hussain

Nursing sepoy Abdul Hafiz Khan, I M. C examined by Counsel for the Prosecution through the Interpreter, stated

I enlisted in the Indian Army in 1940 In 1941 I was sent to Malaya with a draft I was posted to the 12th I G H at Singapore I was in Singapore when it fell I joined the I N. A in September 1942 I was posted to No 2 Hospital at Neesoon I was then transferred to the 7th Battalion of the Nehru Regiment I eventually went to Burma with the same battalion. In 1945, I was in Myingian. Major Rana was the commanding officer of the battalion When I came back to Myingian from Rangoon, I found Major Dhillon commanding the battalion After I came back from Rangoon I saw four men of No 8 Battalion being shot There was a company of No 7 Battalion fallen in to witness this shooting. One day I was carrying a patient and saw four men near a *nullah* whose hands were tied behind their backs and who were escorted by two sentries When I was coming back after leaving the patient in hospital I noticed some men assembled near the *nullah*. Seeing this assembly of men I went up there When I reached there one company was fallen in and a trench had been dug there The accused Major Dhillon and a few other officers were collected there The four men were made to sit in the trench Then Major Dhillon asked for volunteers to shoot these men Two men from that Company and one man from Brigade Headquarters came up Their names were Naik Sher Singh, Kalu Ram and Hidayatullah Two carried rifles and one a pistol, Sher Singh had the pistol Then Major Dhillon called out the name of one of the four men in the trench Major Dhillon told the Company present that these four men had gone over to the enemy and had been caught and therefore their punishment would be death. Then Major Dhillon ordered Hidayatullah to shoot the prisoner who had been called out of the trench first By this time this prisoner had come out of the trench He was standing on the edge of the trench This prisoner was then shot by Hidayatullah and he fell down The prisoner was not blindfolded He was about 20 yards from Hidayatullah when fired upon Then Major Dhillon called out the name of another prisoner who also came out of the trench. As on the first occasion, this prisoner was also told about his punishment and this prisoner also was shot by Hidayatullah Then Major Dhillon called out the name of the third man who was also told his sentence like the previous one, and Kalu Ram shot him under Major Dhillon's orders Major Dhillon then similarly called out the fourth man and this man was also shot by Kalu Ram I saw the four prisoners after they had been shot They were not dead because I saw them moving Major Dhillon then ordered Naik Sher Singh to put one or two more bullets into those who had not died Sher Singh then went up to them and fired, putting one or two bullets into each one of them. I did not see them move after Sher Singh had fired. Then I saw Capt Lee, the Medical

Officer of the Service Battalion examine them. Captain Lee told Major Dhillon that these men were dead. Afterwards Major Dhillon ordered the dead bodies to be buried. I did not see them being buried. I then came away from the scene. I then moved with my battalion towards Irrawaddy. Finally I came over to the Gurkha Regiment a fortnight after these men were shot. These four men who were shot were Jats. I know nothing else about them.

Cross-examined by Counsel for Defence

I had never seen these four men before. I did not know where they had come from. When I joined the I.N.A., I was posted to a hospital as a nursing sepoy. I do not know how many men there were at Popa apart from the fact that the No 5 Guerilla Regiment was there and a few of us. I carried the patient along the bed of the *nullah* until I reached the hospital. The patient was suffering from fever. He was walking along with me. I was taking him to the Popa area hospital in order to have him admitted. The nursing sepoy or the nursing Naik had to accompany everybody who was sick. I took him to the Medical Officer in charge of the hospital and came away after he was admitted. I was in no way connected with the officers and men who were collected near the *nullah*. I tried to find out why they were assembled. It was not part of my duty to go up to the *nullah*. I just saw the men assembled there so I stopped. In the normal course I should have returned to my Unit after admitting the patient in the hospital. There was nothing for me to do in my Unit. I should have gone straight back to my Unit after admitting the patient. I stopped there for about half an hour. I had nothing to do with either the men who were present there or the incident which took place there. I cannot tell the date or the week or the month on which this incident happened. I went over to the Gurkha Regiment which was in a nearby village, the name of which I do not know. The incident to which I referred happened in 1945. I did not mention this incident at all in the Gurkha Regiment. I did not talk to anybody out of the assembly in the *nullah*. The company assembled in the *nullah* was about 100 strong. I did not see any outsider apart from the officers, the Company and myself. They arrested me and sent me back to another place in Burma. From there I came back to Chittagong and then to Calcutta. There were a lot of men with me. From Calcutta I went to Multan. At last I was in Delhi. A captain called me to record my statement. When I was captured I was sent to an F I C at Mitch. Statements were recorded there.

I knew the names of Hidayatulla sepoy, Kalu Ram and Naik Sher Singh because they belonged to my battalion. I was attached to No 7 Battalion Hospital. My duty was to render first aid. I never rendered first aid to the three men I have mentioned. While at Popa the battalion consisted of 200 to 250 men. The three men do not come from the same place in India as I do. I do not know where they come from. I had no personal contact with these three men before that date. I had nothing to do with them after the incident. They used to be in my battalion and I knew them. I cannot give the nominal roll of all the men of the battalion. I know the names of some but not of all men in the battalion. I can give the names of 10 or 12 people in the battalion. It was part of my duty to know the names of as many men as I could in the battalion.

I was 10 to 12 yards away from Major Dhillon. Nobody asked me why I was standing there. I had nothing to do with what Major Dhillon said on that occasion. I am not a poet. I am not a writer either. I swear and say to the court that I remember every detail of what I have told the court. I remember very well that none of the first men nor any of the other men were blindfolded. I omitted this detail in my evidence because I was not asked. I

said that three volunteered to shoot these four men. The whole company was armed. Most of them had rifles and a few of them had not. I knew at that time the name of the men whom Major Dhillon selected to shoot first. I do not know the names of any of the four men who were shot nor do I know their identity. I was 12 to 13 yards away from the place where these men fell. This occurred at about 4 o'clock in the afternoon. I did not have a watch.

The place was subject to air attacks during those days. I passed a month between Popa and Kyauk Padaung. Aeroplanes used to come over us frequently. There were trenches about and the *nullah* was a sheltered area. I do not know the person who chose the *nullah*. I did not go near the men when they first fell nor after. After these four men had fallen down, Major Dhillon asked Sher Singh to put more bullets into those who were still alive. They were all moving, so they were alive. As far as I remember, I said in my summary of evidence that Major Dhillon had ordered Sher Singh to fire a pistol, but it was not taken down. I was not interested in Capt. Lee's examination or his report. I was not interested in their burial either. Darbans Singh gave orders for their burial in my presence.

Questioned by the Court

- This Company in the *nullah* was properly fallen in. These men were in front of the Company. The Company was about 10 or 12 yards from these men and I stood near the Company on one side. Major Dhillon gave orders for the fourth man to be shot.

Sepoy Gian Singh, 6/14th Punjab Regiment, examined by Counsel for the Prosecution through the Interpreter, stated

I joined the Indian Army in 1936. I went to Malaya with my battalion. I was taken a prisoner of war by the Japanese. Later I joined the I N A in 1942. I was posted to Azad Brigade and was subsequently transferred to Nehru Brigade. The Nehru Brigade was then in Neesoon Camp. In October 1944 this brigade was in Rangoon. The Brigade Commander then was Major Rana. Originally Major Rana commanded it in Myingyan and eventually he was succeeded by Lieut. Dhillon. After taking command Lieut. Dhillon delivered a lecture. He said that the discipline of the brigade was bad and he would remedy that and also that we were on the verge of operations and had to give a good account of ourselves. He asked the Battalion Commander to give him the names of the bad soldiers and said that he would try to send them back. He said that after this those who erred would be sent to Rangoon Jail.

The battalion then went to Popa area in the third or fourth month of 1945. I remember four men being shot there. At about 4 o'clock one evening our Company got orders to fall in a *nullah*. On arrival there I saw four men whose hands were tied behind their backs. They were in a trench. Major Dhillon said that these four men had tried to go over to the British and so they were sentenced to death. He then asked for volunteers to shoot them. Three men, Lance Naik Hidayatullah, sepoy Kalu Ram and Naik Sher Singh took one step forward. One man was ordered by Major Dhillon to come out of the trench and Hidayatullah was ordered by Major Dhillon to shoot him. At that point the man said he had a request to make. Major Dhillon said that his request could not be entertained and ordered Hidayatullah to shoot forthwith. Hidayatullah fixed a shot and the man fell on the ground. Major Dhillon then ordered the second man to come out of the trench and ordered Hidayatullah to shoot him. Then Major Dhillon ordered the third man to come out of the trench and asked sepoy Kalu Ram to shoot him. The fourth man was then ordered by Major Dhillon to come out of the trench and Kalu Ram shot him too. Hidayatullah and

together with Capt. Sahgal the accused whom I now identify and with him were a number of other officers of the Indian National Army and approximately a hundred Indian Troops of the Indian National Army at that particular time. More appeared later. My leading Company Commander handed me a note which he had received from a surrender party under a white flag. I am afraid I have not preserved the note; I destroyed it about two months later when I was going through some papers and I am afraid I saw no importance of this note which I threw away. The note was addressed to the Commander of the British Forces or may have been addressed to the Allied Forces and it said that approximately 30 officers and 500 troops of the Indian National Army wish to surrender as prisoners of war. I then talked to Capt. Sahgal and he gave me his name and his Regiment. He said I am Capt. Sahgal and I asked him what his Unit was both in the Indian National Army and in the Indian Army and he told me then that he had been in the 5th/10th Baluch but was captured when he was serving in the 2nd/10th Baluch, and that he was then commanding a Regiment of the Indian National Army and that he had with him there at his Regimental Headquarters a 1st Aid attachment and one Battalion of his Regiment. I then made arrangements for the collecting of all the arms of the prisoners and arranged with Capt. Sahgal about their feeding. We had no food for them. Then I decided that instead of going on that day where I originally intended to go I would harbour my battalion group in the area of Magygan that evening. I then left several of my officers to deal with the final disarmament, the rounding up and counting of the prisoners and I went on myself to reconnoitre a place to harbour that night. Then by the time that we had collected everybody into that harbour it was about 5 o'clock in the evening. The complete count then reported to me was approximately 40 officers and 500 other ranks of the I.N.A. of whom about 50 were wounded. That evening after we had got settled in I sent for Capt. Sahgal and we sat down together and I asked him a number of questions.

(Note by the Court: The Defence have no objection to examination of this witness on the conversation he had with Capt. Sahgal.)

I first of all asked him why he joined the Indian National Army and he said that he would rather not go into that now. After that we got talking about what he had been doing during the last two years of the war. We talked about the disagreements that he had been having with the Japanese. I asked him if he liked the British and he said that he had two or three very great friends among British officers but that the reason why he was fighting was that he disliked the system of British imperialism in India. He told me then that he had fought for what he considered to be right and that now that he had lost he was prepared to take the consequences. I told him that he would be marched back to Brigade Headquarters on the morrow and that he would be sent back and disposed of by Brigade or by Division but that his disposal was nothing to do with me after I had sent him off. Actually Capt. Sahgal himself was very lame and I arranged for his disposal separately in a car which fortunately appeared that evening.

Gangasaran 4/19 Hyderabad Regiment was tendered for cross-examination by Counsel for the defence.

Cross examined by Counsel for Defence

I joined the Indian National Army in February 1944. I joined the 5th Guerrilla Regiment in May 1944. I was promoted as a sub-officer. I was in Pota on February 26 and 27 1945. I was a signal officer in No. 1 Battalion. I was arrested for refusing to take out a fighting patrol. Jodh Singh presented a 'crime report' against me before Capt. Sahgal. I was charged with three crimes.

in this crime report I was sentenced to death Thereafter I was pardoned by Capt Sahgal

Counsel for the Defence intimates that he does not require any other witness whose evidence is contained in the summary of evidence tendered for cross-examination

Prosecution is closed The accused then read out their written statements

Statement by Capt Shah Nawaz Khan

Mr President and members of this Honourable Court

In this statement I am going to lay before you, very frankly, the considerations and motives that have impelled me from the day of my surrender in Singapore on February 15, 1942, to the day of my capture by the British forces at Pegu on May 16, 1945

Before touching on the actual period, I would like to throw some light on my early history and Army career

I was born in a family of Janjua Rajputs in Rawalpindi My father who was the leader of the Tribe in the District served in the Indian Army for 30 years

In the 1st and the 2nd World Wars, every able-bodied member of my family joined the Army - At present there are over 80 of them serving as officers in the Indian Army In short, I belong to a family in which loyalty to the Crown has always been a valued tradition

I was educated at the Prince of Wales Royal Indian Military College, Dehra Dun

In 1933, I passed out into the I M A , Dehra Dun, and received the under-mentioned scholarships —

(a) King Emperor's Cadetship,

(b) Sir Partap Singh Memorial Prize for being the best cadet and for belonging to a family having the best military services to its credit

I passed out of the I M A as an under-officer and was attached to a British Battalion for one year, after which I was posted to 1st Battalion 14th Punjab Regiment in February 1937

In short I was brought up in an atmosphere which was purely military and up to the time of my meeting with Netaji Subhas Chandra Bose at Singapore in July 1943, I was politically almost uneducated I was brought up to see India through the eyes of a young British Officer, and all that I was interested in was soldiering and sport

In March 1941, my Battalion went overseas to Malaya At that time I was left behind in command of a company at the Training Centre at Ferozepore

Early in November 1941, my Officer Commanding, Lt-Col L V Fitzpatrick, wrote to the G H Q India, asking for my being sent out to join the Battalion The Officer Commanding the Training Centre, however, refused to allow me to go on the grounds that my services could not be spared He also protested about it to the G H Q and an India Army Order was published stating that in future the active Battalions should not ask for any officer by name

Col Fitzpatrick, however, again applied for me through Malaya High Command, but his request was again turned down

Early in December 1941, he wrote a private letter to the Officer Commanding the Training Centre, stating that it was imperative in the interests of the Battalion that I should be sent out to join it

On February 17, 1942, I went with my Battalion to Neesoon Camp and after a few days I was appointed Camp Commandant

There were approximately 20 000 Prisoners of War in that camp. The accommodation there was sufficient only for approximately 8 to 10 thousand men. There were no sanitary arrangements, there was no water supply and hospital arrangements were very poor and we had no medicines. As a result of this dysentery and other epidemics broke out in the camp.

The discipline of troops had gone completely and so I had a very difficult task to perform, but thanks to the strenuous effort of the camp medical staff particularly Col Chaudhri Maj Elahi Bux and Major Gillani the disease was controlled, and by the efforts of a S & M unit, electric, water and sanitary arrangements were completed.

After the events in Farrar Park I was fully convinced that the Japs were going to exploit us and so on reaching Neesoon Camp one of the first things I did was to organize a block of officers, with the object of preventing the formation of the I.N.A.

I commanded the Neesoon Camp from March to June 1942, during which period my only concern was to improve the unfortunate lot of the men under my command.

During the time I was commanding Neesoon the largest Indian Prisoners of War Camp in Singapore, not a single person was ever sent to any Concentration or Detention Camp. I allowed everyone to have and express his opinion freely and to decide for himself, without any outside pressure, whether or not he wished to join the I.N.A.

By the end of May 1942 it had become quite evident that in spite of all our efforts the I.N.A. would come into existence.

In the same month we had to decide whether or not we would volunteer for the I.N.A. and volunteers and non volunteers were to be separated. I received orders from the Headquarters to forward lists of volunteers and non volunteers to them for allotment of separate camps to each category.

In view of this new situation I held several meetings of the Bloc and it was decided that since we had failed in our first object to prevent the formation of the I.N.A. the next best thing was for senior officers to join it with the object of

- (a) Giving protection and help to prisoners of war
- (b) To stop its being exploited by the Japs and
- (c) To sabotage and wreck it from within the moment we felt that it would submit to Japanese exploitation.

I however advised the rank and file to keep out of it. This at the time concerned mainly the Muslims.

In accordance with this decision, in the middle of May 1942 at Neesoon in the presence of all officers of the camp I declared myself a volunteer, but gave everyone a free choice to decide for himself. I also gave orders that anyone trying to persuade anyone else to join the I.N.A. would be punished. I also asked for the list which had to be forwarded to I.N.A. Headquarters on the following day.

The same afternoon I called a meeting of all Muslim officers in the mosque and told them my reasons for joining the I.N.A. I also told them that they would be separated shortly and I asked them to give me an

assurance that they would not become volunteers, through any force or coercion used against them by the Japanese. They all agreed and said "Dua-Khan"—a religious confirmation of the decision taken.

Early in June 1942, Capt Mohan Singh called a conference of all senior officers at his residence to discuss the plans for the forthcoming conference to be held at Bangkok. He revealed that he had to take 60 delegates there on behalf of Indian Prisoners of War. He went on to say that he proposed to take only 30 delegates and 60 proxy votes.

My own feeling was that at Bangkok we were likely to be committed too far and I was not in favour of Indian P O W participating in such a conference. In the discussion that followed some misunderstanding arose over the selection of delegates and from Neesoon, the biggest Prisoners of War camp in Malaya, only one delegate and not a single proxy vote was sent to the conference.

On account of this misunderstanding, the same evening I was relieved of the command of Neesoon Camp and was ordered to proceed to Kuala Lumpur, with working parties of Prisoners of War.

I arrived at Kuala Lumpur by a goods train early in June and was appointed Commander of all Prisoners of War parties in Malaya. My duty was to tour all Prisoners of War stations in Malaya and put up their grievances to the Jap G H Q which was at Kuala Lumpur.

At Kuala Lumpur I was ordered by the Japanese to assemble all troops for the Garrison Commander's inspection. The Jap Commander addressing the Prisoners of War said "I welcome you all and am very pleased to have you under my command. We regard you not as Prisoners of War but as our brothers as we are all Asiatics. It is the most ardent desire of all Japanese people that India should achieve its independence as soon as possible and to enable you to participate in the freedom fight we have made arrangements for re-arming and training you for that purpose." I realized that the Japs were out to exploit the Indian Prisoners of War who resented taking up arms.

I explained to the Japanese Commander that the question of Indian Independence was an affair of the Indians and that the Japs had no right to force any Indian against his wishes to participate in it. He agreed with me and it was decided that in future the Indian Prisoners of War would be asked to do only labour, and other Prisoners of War duties.

A similar trouble arose at Seremban, where on refusal of the POWs to take up arms, the Japs fixed machine guns all round their camp, put the Camp Commandant Lt Ghulam Mohd 3/16 P R in a cell and gave the POWs 24 hours to think about it and decide, after which, if they still insisted, they would all be shot.

I heard about it and at once rushed to Seremban, with the Jap G H Q decision given at Kuala Lumpur, and after a great deal of persuasion I was able to make the Japs see our point of view and future trouble was averted. In a similar manner I visited all Indian POWs camps in Malaya and ensured that they were not coerced to take up arms and undergo any form of military training under the Japs.

At Kuala Lumpur the Japs tried to teach the Indian POWs Jap Foot Drill, words of command and saluting. I refused to allow them to do so, although it will be interesting to know that the English Prisoners of War in Rangoon did this.

While holding this position I managed to secure for the Indian POWs excellent living conditions—very likely the best given to any POWs in the Far East.

(a) Food was excellent. It included eggs fish chicken and vegetables.

(b) Work was moderate and pay was given regularly

(c) There were adequate arrangements for the recreation of troops. They played hockey, foot ball, etc. Cinema shows were given in camps and troops could go out and see any picture by paying 10 cents

(d) POWs soldiers could go out of their camp on a pass given by their Unit Commanders from 10 a.m. to 4 p.m. daily and on holidays officers could go out in Musti and visit any civilian friends from 10 a.m. to midnight.

(e) On Fridays, Muslims were allowed to go and say prayers in the Jumma Masjid, and Hindus and Sikhs could go to their respective religious places in the town on Sundays.

On one occasion when I was out of station on tour, the Japs took away 23 N.C.O.s belonging to 42 Fd. Pk. Coy R. Bombay S and M. on the accusation that they were too pro-British and selected some of them for execution and made them sign their last will. When I returned from tour I found this and I at once went to the Jap G.H.Q. and requested them to hand over my soldiers to me. I told them that I was supposed to be the commander of Indian troops and that in principle it was wrong for the Japs to deal direct with my subordinate officers and take away the men under my command without my knowledge.

Finally I told them that if they insisted on doing this I would resign from my appointment. Then they told me that I could take away 15 of them and the rest they said they must execute as they were too pro-British and being Japanese prisoners they were still insisting that they had taken an oath to be loyal to the British King. They said they could not allow such Indians to live.

I explained the full significance of this oath to them and told them that the normal procedure for dealing with any serious offence in the Indian Army was to hold a court of enquiry and I assured them that I would go very thoroughly into the case, and if in the end the court found their offence of a serious nature, I would myself hand them over to the Japs for punishment. They eventually agreed to this and I brought back all the 23 N.C.O.s safely to their Unit, held a court of enquiry and released all of them.

In September 1942 I was recalled to Singapore during the period of my stay at Kuala Lumpur as Commander of POWs in Malaya.

(a) I served them to the best of my ability. Many a time I had to travel by goods train without food and had to face insults and humiliation from junior Jap officers for the sake of the men I commanded.

(b) I refused to allow the Japs to exploit the Indian POW in any way, and at the same time secured them good treatment.

(c) I always upheld the honour and prestige of my country and refused to accept any racial superiority of the Japs.

(d) I also induced the Japs not to arrest any Indian soldiers who had turned civilian during the war and were honourably earning their living. The case of one Sy Abdul Matlab of 2/16th P.R. who had opened a tea shop at Seremban Railway Station is a typical one.

(e) At Kuala Lumpur I helped the Indian destitutes as much as I could. There were scores of them dying of starvation. I requested all POWs to fast for one day in a week and send all the food thus saved to them. The Jap Commander

on coming to know of this was so impressed that he gave 20 bags of rice per month for the destitute camp which we were supporting.

(f) At Singapore in May 1943 the Japanese ordered officers of 2/12th P.F.R. to provide three hundred men to do guard duties over Jap aerodromes. The men refused to go, but the Japanese insisted and it looked as if a serious situation would develop. Sub Fazal Dad Khan of 2/12 P.F.R. then approached me and informed me of the critical situation that had arisen. I went to the Seletar Camp with Sub Fazal Dad Khan, talked to the Jap officer and succeeded in convincing him that it was wrong to persuade POW's to take up arms. After this the unit was never troubled by the Japs.

I was recalled to Singapore in September 1942, and one of the first things I did was to go and pay a visit to all the POW Camps in Singapore, where there were large numbers of men from my area. All along during my stay in Singapore I had been most concerned about the welfare of the POW's whom I quite often used to visit and distribute among them my I.N.A. pocket money, clothing and medicine.

There was the case of one POW Jem Mirzaman, 2/10th Baluch Regt, who had an ulcer in the stomach. The doctor said that he would not survive. I took him to my bungalow, kept him with me for over 4 months and through good nourishment, completely cured him and then sent him back to rejoin his unit which was still a POW unit. There are several such instances.

On recall from Kuala Lumpur, I was appointed Commandant O.T.S. which had to be disbanded after a few days by order of Capt Mohan Singh, who had some misunderstanding with the Japs.

I took full advantage of this situation and together with other members of my "Block" persuaded Capt Mohan Singh to disband the I.N.A. I did so because I knew the Japs were trying to exploit us.

I joined the 2nd I.N.A. in February 1943, on being told that Netaji Subhas Chandra Bose would be coming to Singapore to take over its command.

At this time I also realized that whether we liked it or not, the Japs were definitely going into India.

I also realized that the fight would in all probability be carried into Indian territory as I did not think that the British forces were able to stop their advance.

I had also seen with my own eyes the indiscriminate looting and raping that the Japanese had done in Malaya, and I did not wish it to happen in India. I felt that by going into India with them we would be able to stop this, or at any rate, I would be much more useful to my country with a rifle in my hand to save the life, property and honour of Indians, than as a helpless prisoner of war in Malaya.

I, therefore, set about to collect such men for the I.N.A. who would be prepared to fight even against the Japs if they proved dishonest, and this fact has been established beyond doubt even by the prosecution witnesses.

When Netaji arrived in Singapore, I watched him very keenly. I had never seen or met him before, and did not know very much about his activities in India. I heard a number of his public speeches, which had a profound effect on me. It will not be wrong to say that I was hypnotized by his personality and his speeches. He placed the true picture of India before us and for the first time in my life I saw India, through the eyes of an Indian.

I was most impressed by Netaji's selflessness, his absolute devotion to his country, his frankness and his refusal to bow before the Japanese wishes. I knew that in his hands India's honour was safe, he would never barter it away for anything in the world. Also when I heard him give a free choice to everyone in the

I.N.A. to leave its rank if they were not prepared to make extreme sacrifices and his warning to those who stayed on in the I.N.A. to be prepared to face, thirst, hunger, forced marches and, in the end death, and when with my own eyes I saw the enthusiasm of thousands of poverty stricken Indians in the Far East, who gave to the I.N.A. all that they possessed and the whole families joined the Azad Hind Fauj and became 'Fakirs' for the sake of their country. I knew we had a real leader, and when he in the name of millions of poverty-stricken unarmed and helpless Indians, appealed to us to come forward and sacrifice our lives for their liberation, no honourable Indian could have refused this much to him.

I found a leader and decided to follow him and for me it was the greatest and the most difficult decision of my life, i.e., of fighting against my kith and kin, who were in the British Indian Army in very large numbers and whom I was certain I could never induce to see eye to eye with me.

At the back of my mind was the traditional urge of loyalty to the King. I owed all my education to him. My family and my tribe were one of the privileged classes in India, they were all prosperous and contented. Thus too we owed to the British Government and I knew that no change in India would bring them any more prosperity. In fact they were likely to suffer by it.

But on the other hand when I thought of the 'starving millions' who were being ruthlessly exploited by the British, and were being deliberately kept illiterate and ignorant to make this exploitation easier I developed a great hatred for the system of rule, in India which to me it seemed was based on 'Injustice' and to remove this injustice I decided to sacrifice my everything—my life, my home, my family and its traditions. I made up my mind to fight even against my brother if he stood in my way and in the actual fighting that followed in 1944, we actually fought against each other. He was wounded. My cousin and I were fighting each other in Chin Hill, almost daily for two months.

In short the question before me was the King or the country. I decided to be loyal to my country and gave my word of honour to my Netaji that I would sacrifice myself for her sake.

Another thing which has always upset me has been the difference of treatment between an Indian and a British soldier.

I saw with my own eyes that as far as fighting was concerned there was no difference. The Indian soldier stood his ground and fought to the last, why then there should be so much difference in their pay allowances, food and living conditions, I have never been able to understand. It seemed to me to be extremely unjust.

Secondly I would also like to point out that the I.N.A. was raised, organized, trained and led in the field entirely by the Indians. Comparatively junior officers commanded Divisions and Brigades, V.C.O.s commanded battalions and under the circumstances they did not do it 'too badly'. But on the other hand out of two and a half millions of Indians in the Indian Army not a single officer was given the command of a Division, and only one Indian was given the command of a Brigade.

There were some very senior and competent Indian officers in the army and it appeared to me that the lack of talent could not have been the reason for more Indians not getting higher commands. This also appeared to my mind to be very unjust.

I was a soldier and once I had taken the decision I concentrated on fighting from the first to the last.

In September 1943 Netaji decided to select a picked regiment consisting of the cream of I.N.A. and send it into action to form the spearhead of the

advance into India. It was known as "Subhas Brigade" and I was selected to command it. The Brigade took part in fighting in the Arakan, Haka-Falam and in the vicinity of Koluma.

In December 1944, I was appointed Commander of No 1 Division which was at Mandalay then.

In February 1945 when No 1 Division H.Q. was at Pannama, Netaji came there and told me that No 2, a fresh Division of the I.N.A., was moving to the front in the vicinity of Pegu, and that unfortunately its Division Commander, Col Aziz Ahmed had been injured in an air raid. He, therefore, ordered me to take over its command. I did so, but in April 1945 I had to fall back to Pegu, where I was captured by British forces.

In joining the I.N.A., I was prompted only by motives of patriotism. I fought a straightforward and honourable fight on the battlefield, against most overwhelming odds. I was further handicapped by lack of proper medical, transport and ration supplies and for long periods I with my troops had to live on paddy and jungle grass, and even salt was a luxury for us.

During the operations I with my men marched over 3000 miles in Burma.

From the Japanese we could expect nothing, and they proved more of a hindrance to us than of assistance, and on some occasions I had even to open fire at them. These facts are all in my diaries which are before the court.

I gave good treatment to the British troops that my soldiers captured, and expected to receive the same treatment for my troops when they surrendered as Prisoners of War.

Finally, Sir, I wish to bring to your notice, and to the notice of my country that no mercenary, or puppet army could have faced the hardships as the I.N.A. did. We fought only for India's Independence.

I do not deny having taken part in the fight but I did so as a member of the regular fighting forces of the Provisional Government of Free India who waged war for the liberation of their motherland according to the rules of civilized warfare. I therefore committed no offence for which I can be tried by a court martial or by any other court.

As for the charge of abetment of murder, even if the facts alleged by prosecution were true, I could not be held responsible to have committed any offence. Mohd Hussain, who had voluntarily joined the I.N.A. and submitted himself to its discipline, admittedly attempted to desert and to induce others to desert at a very critical juncture. If he had succeeded in his attempt he would have carried all information about the force under my command to the enemy which would have meant complete disaster for us. Under the Indian National Army Act and under the Military Codes of all civilized nations the offence attempted to be committed was the most serious and heinous offence, punishment for which was death. It is, however, in fact wrong that I sentenced him to death or that he was shot in execution of a sentence passed by me. Mohd Hussain and his companions were only informally produced before me, there being no crime report drawn up. I only very strongly admonished Mohd Hussain and told him that he had committed an offence for which he could and should be shot. I however left the matter there and asked the case to be put up again before me or the Regimental Commander who had, in the meanwhile, been vested with the power to try such cases, if the men concerned attempted to misbehave a second time. The case never came up before me again presumably because the contingency contemplated never arose.

Statement of P. K. Sahgal accused

I deny being guilty of any of the offences with which I have been charged. I also maintain that my trial before this Court Martial is illegal.

After serving one year's attachment with a British Regiment, I joined the 5th Battalion of the Baluch Regiment in February 1940. In October 1940 the Officer Commanding of my unit was asked to send a suitable officer to fill the vacancy of a Company Commander in the 2nd Battalion of the same Regiment which was proceeding overseas on active service. I was specially chosen for being posted to the 2nd Battalion.

I disembarked at Singapore with my new Unit on November 11 1940. A fortnight later we were sent to Kota Bharu in Kelantan State, where we were entrusted with the task of the preparation and manning of beach defences. Major General Murray Lyones, then Commander of Northern Area in Malaya. Major Gen. Barstow Commander of the 9th Indian Division, Lt.-Gen. Heath the Corps Commander and Lt.-Gen. A.E. Percival, G.O.C. Malaya Command inspected our work and complimented me on the very remarkable work done by my Company.

During the Malaya campaign, the Company that I commanded distinguished itself in more than one encounter with the Japanese. Although, generally we were fighting a retreating battle, on occasions we were able to take the offensive and inflict heavy losses on the enemy. On one occasion my Company annihilated a Japanese force approximately 500 strong and captured a large quantity of enemy arms and equipment. This incident was noticed in the Press.

During the night of January 30/31 1942 we crossed the Johore Baru Causeway and reached Singapore. Although my Battalion had been in action without a break from the day hostilities started and had suffered heavy casualties and its officers and men were completely exhausted and their morale was low owing to constant withdrawals and intense enemy air activity they had immediately to undertake the defence of Singapore.

The Japanese landed in Singapore on February 8 1942 and on February 10, we marched out to counter attack the enemy and drove them back into the sea in the woodlands area. Unfortunately the next day we were ordered back to relieve the Australians in the Mandai Hill area. While we were moving along the Mandai Road the Japanese launched an attack. The Australians abandoned their positions and ran away and the Japanese got possession of the high features on both sides of the road. We were caught on the road and my Company which was the leading Company of the Battalion, suffered most heavily. My Company Subedar and three other men of the Company H Qrs. were killed within five minutes.

The Company Headquarters were cut off from the rest of the Company and although the Japanese beckoned my men to go over to them, I managed to reassemble, in an hour or so the whole Company except three or four men whom the Australians had taken away with them. The Company was completely separated from the rest of the Battalion and we continued fighting on our own until the afternoon when we managed to rejoin the Battalion. The same night we were withdrawn to Nee Soon where we stayed for 24 hours. The Japanese made three or four determined attacks to break through our positions but we did not allow a single Japanese to go through and the enemy lost three medium tanks in the engagement. During the night of February 12/13 we were withdrawn to Bidadari where we eventually surrendered.

As we were withdrawing southwards on the mainland of Malaya, I was often approached by the Indians living in those areas. They all asked me the

same question : "You are leaving us behind, what is going to become of us. We contributed all we could for the defence of Malaya and now why do you leave us at the mercy of the enemy? The Chinese and Malaysians all hate us. They will loot and plunder our property, disgrace our women and murder us" There was little that I could do or even say, to help them. The only thing that I could tell them was to trust in God, and to hope for the best. My heart went out in sympathy to them but I felt helpless and ashamed because I was unable to do anything for them.

On February 17, 1942 in a meeting held at the Esplanade Park in Singapore, Lt.-Col. Hunt, as the representative of the British handed over the Indian Officers and men to the Japanese like a flock of sheep. This came as a great blow to us all. The Indian Army had fought bravely against the heaviest odds, and in return the British High Command had left them completely at the mercy of the Japanese. We felt that the British Government had on its own, cut off all the bonds that had bound us to the British Crown and relieved us of all obligations to it. The Japanese handed us over to Capt. Mohan Singh who was styled as the G.O.C. of the Indian National Army and we were left free under him to fashion our own destiny. We *bona fide* believed that the British Crown having ceased to provide any protection to us could no longer demand allegiance from us.

After formally taking over the Indian Officers and men, Capt. Mohan Singh proclaimed his intention of raising an Indian National Army for the liberation of India. He was acclaimed by all those who were present there and they all raised their hands to show their willingness to join the Army.

When a call for volunteers was made by Capt. Mohan Singh, large numbers of officers and men came forward to enlist. There were, however, some who, while equally desirous to see their motherland free from all foreign domination, were sceptic of the intentions of the Japanese in encouraging the formation of the Indian National Army, and I was one of them. I had a feeling that the Japanese only intended to exploit the propaganda value of the proposed Indian National Army but had no desire of helping the cause of Indian freedom. I, therefore, in spite of my most ardent desire to see my country free at the earliest possible moment, refused to volunteer. In May 1942 volunteers were separated from non-volunteers and I with my Battalion was sent to the Tengah Aerodrome Non-volunteer Camp where I stayed as a non-volunteer till the end of August 1942. During this period no pressure of any kind was brought to bear upon me or other officers or men in my camp numbering about 10,000 to volunteer for the I.N.A. The rations provided to us were, considering the prevalent circumstances, quite good and medical aid was satisfactory.

In June 1942, I was invited to attend the Bangkok Conference but I declined the invitation. However, during the period between June and the end of August 1942, events of very far-reaching importance took place which compelled me to revise my earlier decision to keep out of the Indian National Army. In the first place, the Japanese forces met with the most astounding successes in every theatre of the war, and an attack on India appeared to be imminent. Everyone thought that the Indians would soon be exposed to a Japanese onslaught and even the B.B.C. London sent them messages of sympathy in their coming misfortune. The last Indian drafts that had arrived to reinforce Singapore consisted only of raw recruits and gave one a fair indication of the type of men available for the defence of India. Officers who came to Singapore shortly before its surrender told us that there was no modern equipment available for the army in India. I was told that the soldiers were being trained with wooden rifles and light machine-guns and that the defences of the North Eastern borders of India were almost non-

existent. Everyone of us felt convinced that if the Japanese invaded India, there was none to resist their advance. This was a most distressing thought for all of us. In the second place, on August 8 1942 the Congress Working Committee passed the famous 'Quit India' Resolution. Country wide demonstrations followed the passing of this Resolution. The All India Radio, Delhi, and the B.B.C. drew a curtain over the happenings in India. However, certain secret stations, supposed to be functioning somewhere in India, and the Japanese and other Axis-controlled Radio Stations outside India broadcast freely about these happenings and the measures taken by the Government to suppress the freedom movement. From the details broadcast by these stations a veritable reign of terror similar to the one that had followed the revolt of 1857 seemed to have set in. In view of the complete reticence of the British and the Indian Press and the official broadcasting agency on the subject, we had no reason to doubt the correctness of these broadcasts. Needless to say that they filled us with most terrible anxiety concerning our near and dear ones whom we had left behind and with the bitterest resentment against the British Imperialism which seemed to be bent upon keeping our country under perpetual subjection.

I and those of my friends, with whom I was on intimate terms, every day discussed amongst ourselves the very critical situation then existing in India and the best way in which we could help her. We knew only too well the fate that would be in store for our countrymen—when a new foreign power invaded India. The British Government claimed the sole responsibility for the defence of the country and had with contempt rejected the offer of her own leaders to take charge of and organise such defence. The information we had about the state of the defence in India was by no means encouraging and the most optimist amongst us could not be sure of the ability of the British to stop the Japanese advance. The civilian population could not even think of organizing any resistance and must submit to untold sufferings and hardships. The 'scorched earth policy' which the British Government had already decided upon, and even begun to follow must add very considerably to the disaster. After protracted discussions the only solution that we could think of for our country's problems was the formation of a strong and well-disciplined armed body which should fight for the liberation of India from the existing alien rule, should be able and ready to provide protection to their countrymen against any possible molestation by the Japanese, and to resist any attempt by the latter to establish themselves as rulers of the country in place of the British. This being also the avowed object of the Indian National Army, the question that began to agitate the minds of us, who had so far stayed away from that Army was whether it was not our duty to join that Army for securing the freedom of our country—not so much from the British who could hold her no longer but from the Japanese who were bent upon invading India. The protection that the Indian National Army had already been able to give to Indian life, property and honour in Malaya and Burma seemed to furnish another very strong argument in favour of joining it.

For days I passed through a terrible mental struggle. On the one side was my loyalty to my former comrades with whom I had fought shoulder to shoulder and on the other was the urge to save my mother country from the horrors that stared her in the face. After a great deal of careful thought and deliberation I came to the conclusion that I must join the Indian National Army which must be built up into a strong well-armed well-equipped and disciplined force dedicated to the cause of India. Every soldier of the Army must be prepared to make supreme sacrifice for the sake of India and the Army must be prepared to fight

even the Japanese if they attempted to harm the Indians or to establish themselves in India

I did not join the I N A through any fear of Japanese ill-treatment or from any ulterior or mercenary motives. In September 1942, as an I N A Captain, I only received eighty dollars a month, whereas if I had stayed out of the I N A, I would have received one hundred and twenty dollars a month.

I joined the I N A from purely patriotic motives. I joined it because I wanted freedom for my motherland and was ready to shed my blood for it. Another reason why I joined it was that I wanted to safeguard the honour of Indian women and the lives and property of my unarmed countrymen in Burma, Malaya, and India. I joined the I N A for a noble cause and I never stooped to coerce or even to persuade any one to join the I N A against his wishes. So far as I am aware, nobody ever coerced any one to join the I N A. The recruitment to the I N A to my knowledge was purely voluntary. The evidence given by the prosecution on this point is false. In any event, I had nothing to do with any of the alleged atrocities and have no knowledge about them. From the very beginning I was convinced that our strength lay in our selfless devotion to our cause and my aim was that our army should be composed of only those who were willingly prepared to shed their blood for Mother India. For this very reason, before proceeding to the front, I explained at great length to the officers and men under my command the noble ideals for which the I N A had been raised and I also told them the grave dangers, difficulties and hardships that lay in the way of the fulfilment of those ideals. I warned every man that if he was not willingly prepared to fight and suffer for those ideals he need not proceed to the front. Many who did not consider themselves physically or mentally fit to participate in the operations decided to stay behind. They were not subjected to any force or humiliations nor were they punished in any way. They were all transferred to the Reinforcement Group and left behind in Rangoon. On arrival on the front line, I gave another chance to those who did not wish to continue in the front line to return to the base. Those who took advantage of this offer were returned to Rangoon without being punished.

When I arrived in Popa, as I did not consider it honourable that any man should be kept in the ranks of the units under my command and made to fight against their wishes before going into action, I expressly and publicly told all the men under my command that such of them as were desirous of going over to the British could do so at that time provided they left their arms behind and went in one organized party whom I assured a safe conduct through our lines.

I count a number of Englishmen and women among my very best friends. Against the English people, I never cherished any enmity. To the officers and men under my command, I had issued explicit instructions that any prisoner of war captured by them, be he of any nationality, was to be treated kindly.

Till the end of November 1944, I was Military Secretary in the Headquarters, Supreme Command, I N A, and for a time officiated as Assistant Chief of Staff. In December, I was given the command of a regiment which fought in the Popa area. I took part in this fight as a member of the regularly organized fighting forces of the Independent Provisional Government of Free India which fought according to the rules of civilized warfare for the liberation of my motherland from foreign rule. I claim that in doing so I committed no offence. On the other hand, I have served my country to the best of my ability. I claim further that I am entitled to all the privileges of a Prisoner of War. In my Note of April 28, 1945, to the Commander of the British forces to whom I and the

Officers and men fighting under my command surrendered at Popa Hills (the receipt of which Note is admitted by the Headquarters, Bahadurgarh Area in their letter No J 900/50 dated 12-10-45 but which was stated in the letter to be 'unavailable') I said quite plainly that we were ready to surrender only as prisoners of war. On receipt of this Note, surrender was accepted without objection to the terms on which we had offered to surrender and after the surrender we were actually treated as prisoners of war. Had we been told that surrender on the terms offered by us was not acceptable to the British Commander we were determined to fight on and were in a position to do so because we were nearly six hundred strong fully armed and equipped and each one of us was prepared to shed the last drop of his blood for the sake of his country.

From February 13 to March 12, 1945, I was officiating as Divisional Commander in the absence of Col. Shah Nawaz Khan. In my capacity as Divisional Commander I had to try on March 6, 1945 four Sepoys—Hari Singh Duh Chand, Daryao Singh and Dharam Singh—who had been committed for trial by Col. G.S. Dhillon for offences of desertion and attempting to communicate with the enemy under Sections 35 and 29 (c) of the Indian National Army Act. They were found guilty and were sentenced to death. The sentence was, however, not carried out; the convicts like many others who were similarly tried and sentenced about that time, having been pardoned on their expressing regret and giving an assurance not to misbehave in future. The fact of the sentence having been passed was of course used for its propaganda value in order to deter others from deserting.

Even, however, if the sentence had been carried out, I could not be charged with the offence of abetment of murder. The four culprits had voluntarily joined the I.N.A. and had submitted to its discipline, and had voluntarily and willingly agreed to participate in the coming fight. They having shamefully deserted while in action and in the face of the enemy had committed an offence punishable with death under the Indian National Army Act and under the Military Law all the world over. The information which they sought to convey to the enemy would have meant the complete annihilation of the entire force under my command. The sentence was passed after proper trial in the exercise of authority lawfully vested in me.

Although the Indian National Army failed to achieve its primary object of liberating India, every one of us has the satisfaction that it fully accomplished its objective of protecting Indian life, property and honour in Malaya, Burma and other parts of South East Asia against all aggressors. The telegrams that I have received after the commencement of this trial from the President of the Indian Christian Association, Rangoon and the President of the Burma Indians Association and which I am attaching to this statement bear ample testimony to this.

Statement of Lt. G S Dhillon

My story is a simple one. I was enlisted as a sepoy in the 4th Battalion of the 14th Punjab Regiment on May 29, 1933. In 1936 on the recommendation of Lt.-Col. C. Hungerford Jackson I was selected to do a prospective cadet's course at Kitchner College, Nowgong. Before this I had had a long struggle in the ranks. Eventually I was selected to do a Gentleman Cadet's course at the Indian Military Academy, Dehra Dun.

It was in this institution that I learnt to serve my country above everything else. There, I read written in Chettwood Hall in block letters of gold: 'The honour, welfare and safety of your country comes first, always and every time,'

The comfort, safety and welfare of the men you commend comes next. Your own safety and comfort comes last, always and every time "

Ever since I read this motto, the sense of duty towards my country and my men has under all circumstances reigned supreme in my thoughts. It was with this motto in front of me that I served my country as an officer in the Indian Army. After joining the 1st Battalion 14th Punjab Regiment as a 2nd Lieut on April 30, 1940, I remained throughout with my Unit, and moved overseas with it. We arrived at Ipoh in Malaya on March 18, 1941. Then we went to Sungei Patani. Here I had the privilege of officiating under my C O Lt-Col L V Fitz Patrick as Adjutant for about two months. In June 1941, I came back home to do an All Arms Signal course at Army Signal School, Poona.

Just before the outbreak of the war in East Asia, I rejoined my Unit at Jitra on December 5, 1941. During the Malaya campaign I was the Battalion Signal Officer. My battalion was the foremost unit in Jitra Sector to contact with the Japanese forces. We held them for three days. After a battle at Changlun, as we were withdrawing to Jitra, which was to be our main defensive line, we were surprised by the enemy tanks. The C O and most of the officers and men were cut off. On December 12, 1941, after a day of roaming about I managed to contact Capt Habib-ul-Rahman who was also in a similar plight. We managed to collect about 80 men of different units including the British. The main road being in the Japanese occupation, we had to cut our way through jungles and paddy fields.

On the 13th early in the morning, we were attacked by the enemy and most of the men were cut off except about 26 of our own Unit. During the day, however, we managed to gather some more stragglers and in the evening when we were about two miles from Alor Star we were informed by some civilians that Jitra and Alor Star had fallen. We could not believe this and Habib instructed me to follow him by bounds while he with a small party proceeded towards Alor Star to find out the situation for himself. We had hardly advanced a mile when we saw certain people running away from the town. They too told us about the fall of Alor Star and asked us to withdraw. We did so, and on the 14th evening sailed in small coastal boats for Penang from Kuala Kedah. On arrival at Penang we with our party reported at 3 M R C. Within 15 minutes of our arrival we were ordered to leave Penang. On the 16th morning we arrived at Nibong Tibal, about 26 miles from Penang on the main land. Here Habib and myself were given the command of a company each and were ordered to defend two bridges. I was placed in command of a Gurkha Company formed out of the M. R. C. and a detachment of the 1st Bahawalpur Infantry. I remained in position until all our troops north of that point had withdrawn. Eventually, on December 19, we were ordered to withdraw. We fell back to Talping and then to Ipoh, where I rejoined the remnants of my Battalion.

I had not had a single whole meal ever since the war had started—December 8. Rest was out of question during such a retreat. I had an attack of fever and was admitted into a hospital and then evacuated to Singapore. On my discharge from the hospital I reported for duty at 7 M. R. C. I tried to rejoin my unit but red tapism caused so much delay that by the time arrangements were made for my conveyance, the battle of Singapore had begun. During my stay with the 7 M.R.C., I officiated as the Indian Wing Commander and Adjutant. The situation became such that the Commandant of the 7 M R C wanted my presence in order to control the Indian Troops who were getting dissatisfied due to discriminatory treatment. The Commandant said that he had great confidence in my way of handling the troops.

By February 11, 1942, we began hearing rumours that Singapore was going

to surrender I could not believe it. While evacuating Bidadari Camp where 7 M. R. C. was stationed, on the way to town I saw thousands of Indians gathered in an open space. They had hoisted many Indian National Flags. I pointed this out to a British Colonel who was with me. He said "I don't blame them. If we cannot defend them they have to look after themselves".

On the 13th evening we were told officially that 500 of our aeroplanes would arrive by the 15th morning and that the Americans were going to land at Penang and come down south. But they never did. On the 15th at about 22 00 hours the C. O. called for me and told me that Singapore had surrendered unconditionally. This came to me as a great shock. With a heavy heart and tears in my eyes I dropped my revolver and ordered my men to collect their arms. A still bigger shock came when the C. O. told me that the Indians would march off to Farrar Park and the British to Changi. At Farrar Park, Col. Hunt, representing the British Supreme Command handed us over to Major Fujiwara a representative of the Japanese Army who in turn handed us over to Capt. Mohan Singh who was introduced to us as G. O. C. Indian National Army. I felt like one deserted by the British in a state of utter and tragic helplessness.

Mohan Singh expressed his intention of raising an Indian National Army for the liberation of India. His declaration was received with great enthusiasm and a feeling of hope and joy by all of us present at Farrar Park.

I had known Mohan Singh before as we belonged to the same Unit. He was one of my dearest friends and I had confidence in him. However it was after a long mental struggle that I could persuade myself to accept him as G. O. C. With my knowledge of the recent events and of the state of the Eastern defences of India, I felt convinced that Singapore, the biggest naval base in the world having surrendered so quickly there was no possibility of the British being able to defend or hold India against Japanese invasion.

Mohan Singh's task was a hard one. He had never even imagined that one day he would have to handle 75 000 officers and men under circumstances unprecedented in the history of the world. Discipline had to be maintained amongst a demoralized, defeated and disappointed Army. Freedom of political thought had to be given as the I. N. A. was entirely based on a voluntary basis. On top of all this lives of officers and men suspected by the Japanese had to be saved. Our civilian nationals had to be protected against all sorts of dangers. And all this had to be done consistently with India's National honour and laws of humanity. And in doing all this he had constantly to deal with highly suspicious people like the Japanese.

I had seen how people in Malaya had suffered as a result of the Japanese invasion in consequence of the utter lack of preparation on the part of the British Government which had undertaken responsibility for her defence and I shuddered to think of the plight of my own countrymen on invasion of India. It was at this time that I got to realize the full significance of the havoc done to my unfortunate country by the one and a half century of the British rule. While the British had exploited all our material resources for their own benefit and had freely drawn upon our manpower to fight their own imperialistic wars, they had not only done nothing to prepare us for the defence of our motherland in case of need but had in order to keep us in bondage for all time to come completely emasculated us. I felt that if India had been free and in a position to look after her own defences no aggressor could have thought of crossing her borders. In the Indian National Army proposed to be organized by Mohan Singh I saw a new hope for India. I felt that if a strong and willing National Army could be raised at that juncture, it could not only liberate India from foreign rule but could also resist the Japanese in case they should try to go back upon their word and instead of helping us to win our freedom, should seek to exploit our country for their own purpose. Such an army could also give protection to our

Indian brethren in the Far East against aggression by people belonging to other nationalities. Mother India seemed to be calling me and I decided to respond to her call and threw in my lot with Mohan Singh.

I co-operated with Mohan Singh in the organization of the Indian National Army till June 29, 1942, when I became very ill and had to go to hospital. On being discharged from the hospital on October 2, 1942, I was sent to Penang for reasons of health. I am still not quite well and fit for work. I returned from Penang about the time when very sharp differences had arisen between Mohan Singh and the Japanese culminating in the arrest of the former and dissolution of the I N A by him. On receiving the assurance that Netaji Subhas Chandra Bose would come to lead the movement I decided to continue in the 2nd I N A.

Recruitment to the I N A at all times was on a purely voluntary basis. To my knowledge no coercion or force was ever used to induce any prisoner of war to join the I N A. In fact use of force or coercion for such purpose was wholly unnecessary because we always had a very large number of surplus volunteers whom we were unable to arm or put under training for want of equipment. The evidence given by some of the prosecution witnesses that prisoners of war were sent to Concentration or Detention Camps to coerce them into volunteering is absolutely false. There was no Concentration Camp in existence at all. There was a Detention Camp to which only persons found guilty of indiscipline or other offences were sent by way of punishment. That camp had, however, nothing to do in any shape or form, with enlistment in the I N A. On the contrary, persons confined in the Detention Camp were not accepted as volunteers even if they offered to do so, because detention in that camp for any period indicated some defect of character which was a disqualification for membership of the I N A. These witnesses have told false and distorted tales to save their own skins or to curry favour with the Government. In all lectures delivered by me I warned my audience in the clearest possible terms that they should volunteer only if they loved their country and were willing and able to bear all kinds of hardships and sufferings in her cause. At the time of going into action I again warned the men under my command that we had to fight against an enemy much better equipped and far superior in men and materials and that anybody who, either for want of courage or otherwise, did not wish to go to the front need not do so and could, if he so desired, be sent back to the rear areas. Some of the officers and men did show their unwillingness and about 200 such men were sent back to Rangoon before my Regiment left Myingyan. This option I gave to my command at every stage of the campaign and it was due to this particular reason that although for weeks I stayed within two miles of the enemy lines yet none of my men ever went and reported my location to the Allies.

Many a time I had to go without water for 20 to 30 hours and without food for two or three days. If as a Brigade Commander I had to undergo these hardships my men must have suffered much more and yet they accompanied me. No men who had joined under duress or coercion could have done so.

It is true that I committed four men for trial on charges of desertion and attempting to communicate with the enemy. It is however quite untrue that those men were shot at my instance or under my orders. On the day and at the time they are said to have been shot I was confined to bed and unable to move. In fact the sentences of death passed on these men were subsequently remitted by the Divisional Commander and were never executed.

Whatever I did, I did as the member of a regularly organized force fighting under the Provisional Government of Free India and am, therefore, not liable to be charged with or tried under the Indian Army Act or the criminal law of India for any offence on account of any act done by me in the discharge of my duties as a

member of such force I am further advised that in point of law my trial by the court martial is illegal. I joined the I N A with the best and purest of motives. As a member of the I N A, I was able to help a number of prisoners of war with money and materials. The I N A. was able to protect life, property and honour of the Indians residing in the Far East. It saved the lives of many civilians and prisoners of war who had been sentenced to death by the Japanese on different charges. I successfully persuaded the Japanese to refrain from bombing civilians and their properties in Indian towns. The Indians in the Far East showed their appreciation of the services rendered to them by the I.N.A. by contributing crores of rupees to the funds of the Provisional Government.

I respectfully maintain that the I.N.A. rendered distinguished services to two and a half millions of Indians who owed allegiance to the New Provisional Government of Free India and was actuated by the most patriotic motives.

TELEGRAMS - 13 11 45

DLT NIL R 128/13 RANGOON 12 VIRG

30LT SAHGAL INA PRISONER RED FORT DELHI

BURMA INDIAN ASSOCIATION SENDS YOU GREETINGS HOPE YOU WILL BE RELEASED YOU SERVED INDIA AMK PITCHAI PRESIDENT BURMA ASSOCIATION

NLT NIL 13/13 RANGOON 12 IRC 7 NLT

SAHGAL INA PRISONER TRIAL ON NOV 5

BURMA SYMPATHISES WITH YOU GOD WILL HELP YOU
YOUR INA SAVED THOUSANDS OF INDIAN LIVES FROM BEING
BUTCHERED BY ARMED MEN WHILE THEMSELVES LEFT UNARMED
INA SAVED ENTIRE INDIANS FROM ABJECT SLAVERY
TELEGRAPHING VICEROY AND JAWAHARLAL NEHRU MISS S.A.
AREN PRESIDENT INDIAN CHRISTIAN ASSOCIATION 56 126 Mn.
STREET KALABASTI

Proceedings of December 8

The Court is reopened

Mr Saburo Ohta of the Japanese Foreign Office in his examination in chief said: During the late war I belonged to the Japanese Foreign Office. I am aware of the Provisional Government of Free India. It was proclaimed on October 21, 1943. The Japanese Government treated it as free and independent Government and wished to render all possible assistance.

Mr Ohta produced a copy (marked SSSS) of an announcement by the Board of Information, Japanese Government relating to the establishment and recognition of the Provisional Government of Azad Hind.

(Note by Court - Copy of this document and subsequent documents are admitted on the assurance by Defence Counsel that the absence of the original copies will be proved later.)

He produced a statement (marked TTTT) of the Japanese Government dated October 23rd 1943 and testified that the statement was correct.

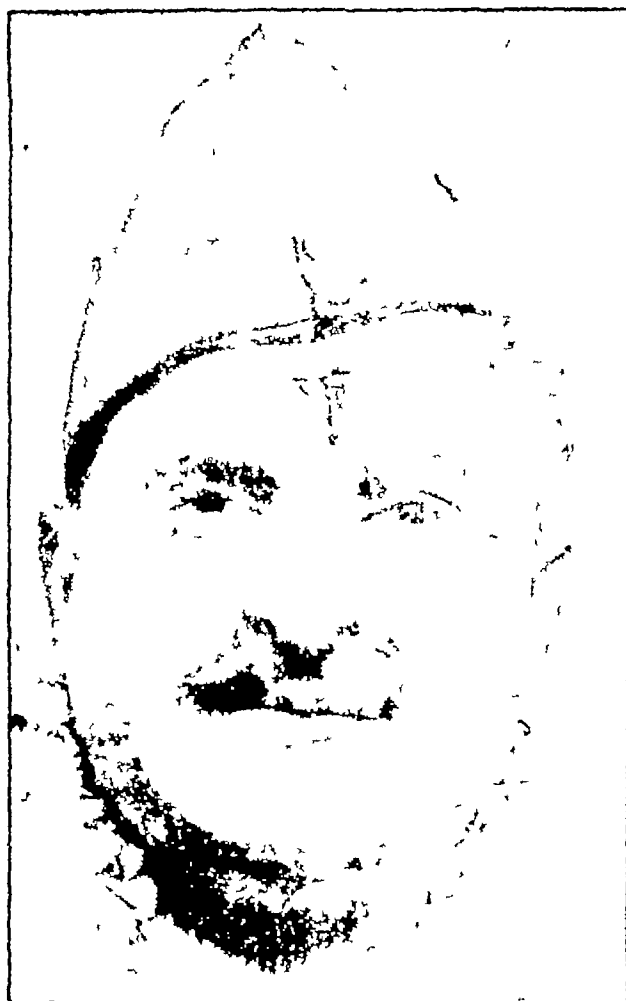
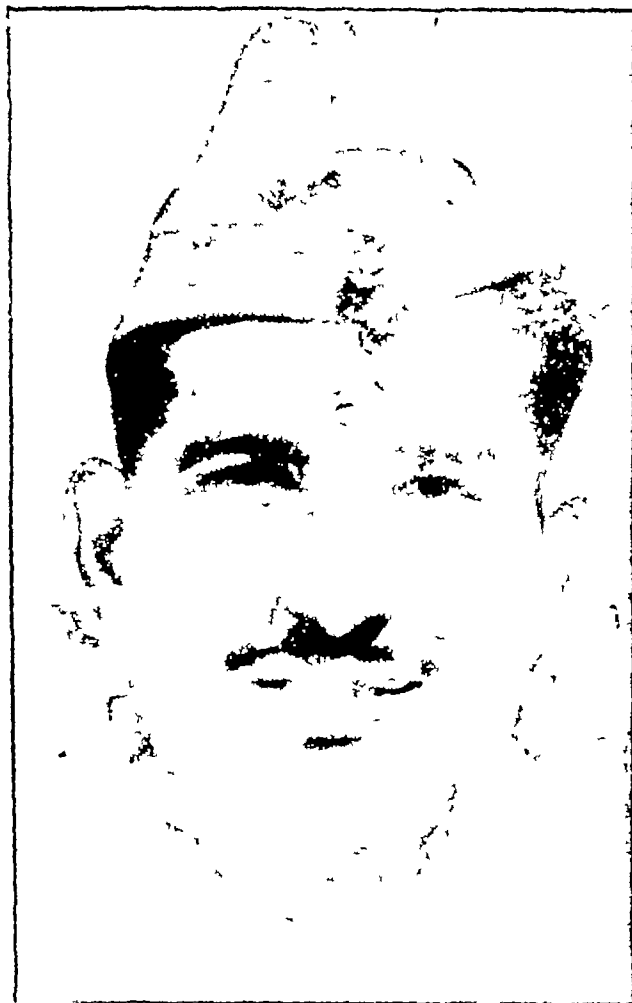
Mr Ohta produced a copy of a statement (marked UUUU) by the Prime Minister, General Hideki Tojo.

Mr Ohta continued. I am aware that it was decided by the Japanese Imperial Government to send a diplomatic representative to the Free India

Capt P K Sahgal

Accused Officers

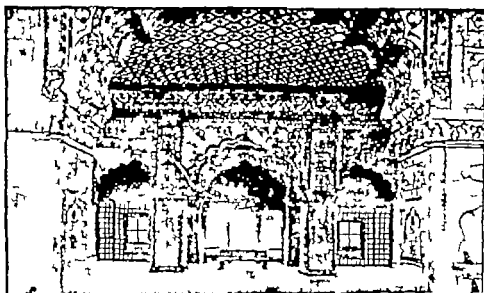
Capt Shah Nawaz Khan



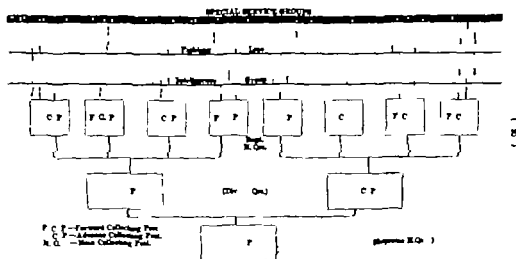
Lt G S Dhillon



Another view of the Diwan e Khas



Part of Exhibit TT (I N.A Case)



Government Mr. Hachiya was sent as the representative Mr. Ohta produced a copy of an announcement (marked VVVV) of the Board of Information, Japanese Government

Cross-examined by Counsel for Prosecution

Mr. Ohta said: Since 1928 I have been in the Japanese Foreign Office. I am not aware that there was a branch of the Indian Independence League in Tokyo long before the war. I was in the Foreign Office in March 1942. I am not aware of the meeting of the "Goodwill Mission" in Tokyo in March 1942. I do not know of any conference held at Bangkok. With regard to the Announcement (Ex SSSS) that is a true copy of the original Note. I have no knowledge what steps the Japanese Government took in regard to the transfer of the Andaman and Nicobar islands.

Mr. Shunichi Matsumoto, examined by Defence Counsel through the interpreter, Major R. G. Walker of the First Punjab Regiment, said: I belonged to the Foreign Office of the Japanese Government during the last war. I was Vice-Minister for Foreign Affairs from November 1942 to October 1944 and again from May 1945 until the end of the war. Before this period I was Director of the Treaty Bureau. This Bureau dealt with matters regarding treaties with foreign countries. I was aware of the establishment of the Provisional Government of Free India.

I have seen the exhibit (marked TTTI) in the Tokyo Foreign Office. I think this is a correct copy. I am aware that the Provisional Government of Free India was recognized by the Governments of Germany, Italy, Kroachia, Manchukuo, China, Philippines, Thailand and Burma.

I was present when the speech (Ex UUUU) was made by Prime Minister Tojo at Tokyo in the Assembly of Greater East Asia Nations on November 6 1943. I think the copy of this speech now shown to me is substantially correct.

Cross-examined by Counsel for Prosecution

Mr. Matsumoto said: I was director of the Treaty Bureau from September 1940 to November 1942. I had no dealings with the Indian Independence League in the course of my duties. I think there was a meeting of the Goodwill Mission in Tokyo but I do not remember when it was held. I know nothing about what happened at the meeting. I have never met Rash Behari Bose. In my capacity as Vice-Minister for Foreign Affairs I know of some connection with the Indian Independence League but I do not know what it was. I know absolutely nothing about whether the Japanese Government encouraged the activities of the Indian Independence League before the war. It was not my duty as Director of the Treaty Bureau to know about these things. In the Treaty Bureau I attended to matters in connection with actual treaties with other countries, and I think the Indian Independence League was a political matter. I know nothing whatever about any policy of the Japanese Government to create and encourage unrest in India before the war.

I knew Rash Behari Bose was in Japan. He was in Japan for many years before the war, but I do not know for how long. The recognition of the Provisional Government of Free India was first considered in October/November 1943. I am not aware that as early as March 1942 members of the Indian Independence League in Malaya had approached the Japanese Government to obtain recognition for a Provisional Government of Free India from Japan and its allies.

I knew Subhas Chandra Bose. I first met him about April 1943 in my

official residence in Tokyo. He came from Germany. Japan made arrangements with the German Government and he was sent to Japan. (Witness says that Subhas Bose was asked for because they knew that he was working for the independence of India and that it would help Japan's war aims and at the same time Japan wanted to help this man to obtain independence for India). The Japanese Government did this at its own instance. It was done to help the Japanese war aims. As far as I am concerned I understand that Subhas Chandra Bose was to be the head of the Provisional Government of Free India and of the Indian National Army. Subhas Chandra Bose came to Japan about April 1943. I heard of the intended Provisional Government of Free India in about April 1943. I think Subhas Chandra Bose remained in Japan about one month on that occasion. I knew officially that the Indian National Government was going to be formed and that Subhas Chandra Bose was to be its head and that Japan would recognise and help that Government. I think the only reason why the Japanese Government wanted to recognise the Provisional Government of Free India was to help the Japanese war efforts.

Japan had asked all her allies to recognise the Provisional Government of Free India and they did recognise it. Subhas Chandra Bose asked Japan's allies through the Japanese Government to recognize the Provisional Government of Free India. I am not quite sure whether Subhas Chandra Bose made the request in writing or not but I do not think it was in writing. At the present time I do not remember. In Manchukuo they had Japanese troops there but as far as Japan was concerned Manchukuo was considered an independent state. It was absolutely independent and not under Japanese control. Recognition of the Provisional Government of Free India was by the Nanking Government of China. The Japanese troops were also there. In Nanking the Japanese troops were there but not in occupation. Japan was helping the Nanking Government which was also considered to be absolutely independent. Not only Japan but Japan's allies as well considered the Nanking Government as independent. Spain also recognised the Nanking Government as being independent. Japanese troops were in the Philippines but at that time the Japanese had already granted the Philippines their independence. But the Japanese Army was there. The Japanese troops were in Thailand but they were not in occupation of it. *The Japanese troops were in Burma but the Burmese had already been given their independence before that I do not know the strength of the Japanese Army in Burma.* I know Vice Admiral Takazumi Oka, Chief of Military Affairs Section, Imperial Japanese Navy.

Re-examined by Defence Counsel Mr Matsumoto said: The Japanese war aim as regards India was to make it independent.

At this stage the court adjourned to meet again on December 10 1945.

December 10 1945

Mr Renzo Sawada, who was former Vice-Minister for Foreign Affairs in between October 1944 to May 1945 examined by Defence Counsel, said:

I was aware of the Provisional Government of Azad Hind during the time I was Vice Minister. The decision to appoint a minister was taken in November 1944 and Mr T Hachiya was appointed Minister. He arrived at Rangoon at the seat of the Provisional Government in March 1945.

Cross examined by Counsel for Prosecution

Mr Sawada said: In my capacity as Vice Minister for Foreign Affairs I was concerned in the despatch of Mr Hachiya to Rangoon. I received commun-

cations from him after his arrival in Rangoon. They are in Tokyo. No letters or credentials were given to Mr Hachiya when he went to Rangoon, because credentials were not issued solely because the Government was provisional. But at the instance of Mr Subhas Chandra Bose, credentials were issued later. A decision was arrived at to issue credentials. It was duly signed by the Emperor and sent to Mr Hachiya about the middle of May. In 1945, on account of the bad condition of communications it did not actually reach the destination and the hostility came to an end. Mr Hachiya actually acted as Minister in this sense that he paid a visit to the Foreign Minister of the Provisional Government and the Foreign Minister paid a return call on him. Even before the presentation of the credentials, I believed he was in a position to function as a minister. I do not know actually what official dealings he had with the Foreign Minister of the Provisional Government. I do not know his name. The Foreign Minister paid a return visit. I know this from a report from Mr Hachiya. I know that Mr Subhas Chandra Bose refused to have anything to do with Mr Hachiya because he had no credentials. The request to send the credentials was not in writing. It was on a report from Mr Hachiya. About the middle of May, the credentials were sent from Tokyo. I know that the British Army entered Rangoon about 3rd May 1945. I know that the Japanese began to evacuate Rangoon about the end of April and finally evacuated about 30th April 1945. I do not know whether Subhas Chandra Bose left Rangoon on April 24, 1945. I have no personal knowledge of what happened in Rangoon between the middle of April and the time of the British entry into Rangoon. Mr Hachiya left Rangoon about the end of April. The credentials were meant for Mr Hachiya. They were to be transmitted to him wherever he was. I do not know to what place they were actually transmitted. I do not know where Mr Hachiya went to after he left Rangoon. He did not return to Japan. He went to Bangkok. He remained there till the end of the war—up to the middle of August 1945. We received no communication from him from Bangkok.

Re-examination declined

Mr Teruo Hachiya, Japanese Minister to the Provisional Government of Free India examined by Defence Counsel, said

I reached Rangoon in March 1945. I there met the Foreign Minister of the Provisional Government of Azad Hind, Col Chatterjee. I remained in Rangoon until the 24th of April 1945. From Rangoon I went to Bangkok. I think the Provisional Government of Azad Hind also moved to Bangkok at the time. I remained in Bangkok until I came here. I did not bring any credentials when I first went to Rangoon. I called on the Foreign Minister of Azad Hind Government on my arrival in Rangoon. I informed the Foreign Minister myself that I was the Minister of the Japanese Government. I did not take credentials as I was not given any. I never received any credentials. I received a telegram stating that credentials had been sent, but I did not receive them.

Cross-examined by Counsel for Prosecution Mr Hachiya said

I did not take any papers with me when I went to Rangoon. Nor did I take a letter from the Japanese Government addressed to anyone. I only went and told Col Chatterjee that I had been appointed Minister. I later saw Mr Aiyer. I cannot remember exactly the date when I saw Col Chatterjee, but it was two or three days after my arrival in Rangoon in March 1945. I saw Mr Aiyer two or three days before leaving Rangoon. Col Chatterjee came to my residence two or three times. I am not quite certain, but I think that I only saw Mr Aiyer once. I did not see Mr Subhas Chandra Bose in Rangoon. I wanted to see him. I was told that he would not see me because I had no credentials. It was Col Chatterjee

who told me that Four or five days after my arrival in Rangoon I sent a telegram to Tokyo asking for credentials. Before I left Rangoon I received a telegram from the Japanese Government stating that they were sending credentials. I have not got the telegram. That was the only communication I received about that matter. I received a telegram in Bangkok stating that the credentials had been sent. I do not remember when I received that telegram. I think it was about the end of May or the beginning of June. I left Rangoon with my own people. We were a party of three. They were Mr Kakitsubo and Mr Ohta. Mr Kakitsubo was the first Secretary and Mr Ohta was an interpreter. I am not sure if the Japanese commercial firms started evacuating Rangoon from the 21st April 1945. I do not think they left at that time. I think they left about the 23rd or 24th April 1945. I do not know when the Japanese army started to evacuate Rangoon. Before I left Rangoon I heard that the Headquarters were evacuating from Rangoon. That is all I know. I think that some part of the Japanese Headquarters had left. I am not sure about this. I was not directly concerned with the move of the Japanese troops. I did not go to see them off. I met the Chief of Staff of the Japanese Headquarters on the 24th April 1945. His name was Tanaka. I do not think Tanaka left Rangoon before I did.

Re-examined by Counsel for Defence

Mr Hachuya said I think that the Provisional Government of Free India moved from Rangoon to Bangkok because I met Mr Chatterjee in Bangkok.

Questioned by the Court

Mr Hachuya said I know that the Provisional Government of Azad Hind moved to Bangkok.

Major General Tadashi Katakura, examined by Defence Counsel through the interpreter stated In 1943 I knew the existence of the Indian National Army. I knew of the Provisional Government of Azad Hind. I met Mr Subhas Chandra Bose in Rangoon in July 1943. I planned the Imphal campaign on the orders of the Commander of the Southern Army who was General Terouchi. In the Imphal battle the I.N.A. fought as an army separate from the Japanese and they were fighting for their independence. The I.N.A. were allotted a separate operational role in the battle of Imphal under the control of the Japanese. I knew that the first Guerilla Regiment arrived in Rangoon in January 1944. I knew that Capt. Shah Nawaz, an accused whom I recognize, was its Commander. I think the regiment went to the front in February or March 1944.

Witness explained to the Court with the aid of a diagram the role of the First Guerilla Regiment in the operations in 1944.

Witness said I am not sure but I think that there was a Liaison Officer with Capt Shah Nawaz's regiment. When there were no operations in progress the I.N.A. and the Japanese were independent. When an operation was in progress they came under the command of the Japanese higher command. The arrangement was that whatever territory was captured in India it would be handed over to the I.N.A. It was to be controlled by the Provisional Government. All booty was to be handed over to the Provisional Government of Azad Hind.

A proclamation was issued when the Japanese and I.N.A. entered Indian territory. There were two separate proclamations one signed by Subhas Chandra Bose and the other signed by Lt-General Kawabe. The Japanese proclamation said that they were to fight the British and not the Indians and that whatever booty and liberated territory they obtained they would be handed over to the Provisional Government. The proclamation signed by Subhas Chandra Bose was

that they were fighting for Indian independence and that all territory captured by the Japanese would be handed over to the Indians I am unable to produce these proclamations

Cross examined by Counsel for Prosecution

Major-Gen. Katakura said · I think the Imphal campaign was planned about January 1944. It began about March 1944. I was not there up to the end of the campaign. The strength of the Japanese Army in Burma in January 1944 was about 230,000. I think there were seven Divisions in Burma in January 1944. The strength of the I N A in 1944 was at the most 10,000 men. All told there were about three Divisions of I N A at Imphal. I do not know the strength of the three Divisions. I think a Division in the I N A comprised about seven to eight thousand men, but I am not sure. I think there were more than 10,000 men of the Indian National Army in the Imphal battle. Many came from Singapore and the original figure 10,000 was increased. I think some came from India to join up, I do not know how many. I only heard about this I N A men started coming from Singapore about the month of January 1944. I do not know the names of the Regiments of the I N A which fought at Imphal. I think No 1, 2 and 3 Guerilla Regiments fought at Imphal. Besides those three Regiments I think there were other small units. I do not remember their names. I think that there were about 10,000 men of the I N A at the Imphal battle in the first place, but they were augmented from time to time. I do not remember about S S Group but I heard of Intelligence Group and Reinforcement Group. I have not heard of the Bahadur Group. Some I N A personnel belonging to the Intelligence Group were attached to the Japanese, but I do not know how many. I do not know when the I N A began to retreat from the the Imphal front, because I was not there. I am not in a position to say to what numbers the I N A were reduced as a result of the Imphal campaign. The last stage of the Imphal campaign up to which I know was about the 15th of April 1944. The Japanese army has never used the I N A as labourers. As far as I am aware the I N A have not been used for making roads, repairing bridges, putting out jungle fires and driving bullock carts, carrying ration for the Japanese troops. As far as I know, I know nothing about the conditions described in the Ex TT. As far as this document is concerned, I know nothing at all about it. Those of the Indian prisoners whom the Japanese Army captured, and who wanted to join the I N A were transferred to the I N A but those who refused to join the I N A or did not want to join the I N A were treated as prisoners of war by the Japanese. I have received a report that such things as winning over troops by shouting slogans in the front line were happening, but I do not know about it personally. All communications could have been sent without going through the Hikari Kikan. Officers of the I N A broadcast from Rangoon. The Japanese authorities never instructed the I N A officers to broadcast Japanese and I N A. saluted each other.

The arrangement regarding handing over booty to the Provisional Government of Azad Hind was, I think, made between the Southern Army and Mr Subhas Chandra Bose but I am not sure. The orders came from Field Marshal Terauchi to General Kawabe. I have seen the order myself. The order is not available now. This order was dated sometime in the autumn of 1943. Such matters would be part of my duty. Before the proclamations were made I met Subhas Chandra Bose and I saw Major-General Yamamoto, the head of the Hikari Kikan. I saw a translation of Mr Subhas Chandra Bose's proclamation and I saw the Japanese proclamation in the original. This was in January 1944.

Re-examined by Defence Counsel, witness said

Capt Shah Nawaz arrived at the Hakafalan line about the end of March 1944. That was a part of the Imphal campaign. I know a place called Palel. According

to a report No 2 Regiment of the I N A was there in April 1944. I saw in a report that the I N A. had crossed the border into India. I do not know anything about Capt Shah Nawaz being ordered to move anywhere in June 1944. The duty assigned to Capt. Shah Nawaz Khan's regiment in the Hakafalan area was an important military duty. About April 1944, the Japanese Government and Subhas Chandra Bose sent messages of congratulation to Capt Shah Nawaz Khan. It was in congratulation of the I N A. having crossed into India.

At this stage the court adjourned to meet on December 11 1945

The court reopened on December 11

Mr S. A. Ayer, Propaganda Minister in Azad Hind Government examined by Defence Counsel, said In December 1940, I was in Bangkok. I remained there until the Japanese declared war. On the 10th of December I left Bangkok and tried to get back to India via Burma. I did not succeed in doing so as the frontier had been closed two days before I reached there. I was in Bangkok in June 1942. In the middle of June 1942 what was called a conference of Indians from all over East Asia was held in Bangkok. The following countries were included. Thailand (Siam) Burma Malaya, Singapore, Indo-China, Java, Sumatra, Philippines, Shanghai and Japan. The rough estimate of the number of Indians in these countries was somewhere from about two and a half millions to about three millions. I attended the conference as an observer. There was no other organization in existence at that time connected with Indians. In July 1942 I joined the headquarters of the Indian Independence League in East Asia which was established in Bangkok. The primary object of the Indian Independence League as far as I understood at the time was to win the independence of India. The headquarters of the Indian Independence League at this time was in Bangkok. I was appointed to take charge of the Publicity Department of the headquarters of the Indian Independence League in East Asia. I was in Bangkok doing that duty till the end of February 1943 when I left for Singapore arriving there on March 3. In Singapore I met Mr Rash Behari Bose who was President of the Indian Independence League and he told me that he had decided to shift the headquarters of the Indian Independence League from Bangkok to Singapore as early as possible. Arrangements were taken in hand and the shifting started some time in April 1943.

I knew Netaji Subhas Chandra Bose earlier. Netaji Subhas Chandra Bose arrived in Singapore on July 2 1943. On the 4th a conference of delegates representing Indians all over East Asia was held in Singapore. At that conference Mr Rash Behari Bose formally handed the presidency of the Indian Independence League in East Asia to Netaji. When Mr Rash Behari Bose told the delegates and the audience that he had brought them a present from Tokyo namely Netaji Subhas Chandra Bose, and that he was handing over the presidency of the Indian Independence League to Netaji Subhas Chandra Bose, there was an outburst of frenzied cheering. He was accepted by the delegates. In the course of his address to the delegates Netaji made a rather important announcement, namely that he intended to establish a Provisional Government of Free India as early as possible. That was received with very enthusiastic cheering from all parts of the House.

On October 21, 1943 another conference of delegates representing Indian Independence Leagues in East Asia was held in Singapore. Netaji Subhas Chandra Bose, after the General Secretary had read out a report of the progress of the Indian Independence League's branches throughout East Asia announced the establishment of the Provisional Government of Azad Hind. This announcement was received by the delegates and by all present in the hall with a tremendous outburst of applause and cheering. After announcing the names of the members of this Government Netaji Subhas Chandra Bose

himself took the oath of allegiance to India. After that the other members of the Government took their oath of allegiance to India and to Netaji Subhas Chandra Bose. The entire proceedings were punctuated with outbursts of cheering and shouting of "Netaji Subhas Chandra Bose ke jai", and "Arzi Hukumat-e-Azad Hind ki jai".

After the establishment of the Provisional Government, the Provisional Government declared war on Britain and America. My office in the Provisional Government was as Minister of Publicity and Propaganda. The Provisional Government used the machinery of the Indian Independence League as its own executive.

To the best of my recollection this (Ex FFFF) is the proclamation by Subhas Chandra Bose. The list of Ministers is correct. The formation of the Provisional Government was welcomed by Indians in Malaya as giving the Indian Independence movement a different status in the eyes of the world and with the Indian National Army the Indians in Malaya felt that apart from the fight for India's independence they had absolute feeling of security. The Provisional Government through the League provided for education on national lines to Indians, and relief, medical and otherwise, was provided for by the Government through the machinery of the League. The Government gave directions to the Indian National Army to give protection to Indian nationals wherever and whenever it might be needed, particularly against any lawless elements anywhere.

As a matter of course, the Indian Independence League branches in Malaya set about getting the signatures of the members of the Indian Independence League to an oath of allegiance to the Provisional Government of Azad Hind.

The number of persons who took the oath of allegiance up to the month of June 1944 amounts to 232,562.

The Provisional Government collected donations from Indians throughout East Asia. They were collected by the headquarters of the Indian Independence League in East Asia, namely, in Singapore for a start. In Burma the Provisional Government opened a National Bank of Azad Hind. The funds of the Provisional Government were banked with this bank. The donations were in cash as well as in kind. By kind I mean that it generally included clothing material and very often foodstuffs, metal-ware and anything that could be of use to the Indian National Army.

It shows a total collection of 5,343,946 dollars and 18 cents. Articles of gold, jewellery and silverware were donated to the Indian Independence movement fund to the approximate value of 86,310 dollars. The dollar exchange was over a rupee before the outbreak of war. The National Bank of Azad Hind was established in Rangoon in April 1944. I know a man called Dina Nath. He was one of the Directors of the Bank. I was the Chairman of the Bank.

Subhas Bose took over the command of the I N A when he assumed the presidentship of the Indian Independence League and later on he became the Supreme Commander of the Azad Hind Fauj. In a general way I as Minister of Information knew of the way in which recruitment was going on for the I N A. The recruitment was absolutely voluntary. We had always surplus volunteers whom we could not train or arm. In Singapore, there was a school for training civil administrators. It was established in two or three months of Subhas Bose's arrival in Singapore.

The relations between the Japanese Government and Azad Hind government were as between two allies having dealings on a footing of equality. The Provisional Government had moved to Rangoon about a month earlier than I moved.

I have personal knowledge at least of two or three instances in which the Azad Hind Government maintained its complete independence. In the month of March 1944 there was a conference between Netaji Subhas Chandra Bose and the Japanese. I was present at the Conference. It was in connection with the appointment of a War Co-operation Council in connection with the operations to be carried out on Indian soil. The Japanese suggested that the Chairman of that War Co-operation Council had better be a Japanese and adduced a lot of arguments in favour of their suggestion. But Netaji resisted that suggestion and gave his own reasons why he could not accept that suggestion. The Japanese said that it would be much better to have as a Japanese Chairman for practical convenience but Netaji said that as a matter of principle he could not accept that suggestion. He added that he would not accept anything that he knew very well would not be acceptable to the people of India. So as a matter of principle, to maintain India's integrity, sovereignty and complete independence he could not agree to the appointment of a Japanese Chairman to the war Co-operation Council the members of which will be both Japanese and Indians. He made the counter suggestion that the Chairman had better be an Indian, otherwise let the members of the Council both Japanese and Indian, meet on a footing of equality without a chairman, so that absolute equality would be maintained. To the best of my recollection no Japanese chairman was appointed.

As another instance, there was another conference where I was also present. The Japanese said that they would have been glad to receive advance intimation of the appointment of a Minister of Supply and Minister of Manpower of the Provisional Government before these appointments were actually made. Their reason was that these two new ministries and their work might directly or indirectly affect the Japanese war effort. But Netaji maintained that the appointment of these ministers was a purely internal affair of his and he would of course not mind informing them as a matter of courtesy after the appointments had been made. He maintained that attitude till the end.

Another instance which came to my knowledge in the course of my official duties was where Netaji made it clear in a scheme drawn up for the administration of liberated areas that no Japanese firms would be allowed to move into the liberated areas at any rate for the time being. No other bank but the Azad Hind Bank was to be allowed to function in the liberated areas.

There were four broadcasting stations attached to the Azad Hind Government. As Minister of Publicity and Propaganda I was responsible for the functioning of these stations. There was no outside control.

There were civilian volunteers in very large numbers for the I.N.A. from Malaya and comparatively smaller numbers from Burma and proportionate numbers from other parts of East Asia.

I heard about the famine in Bengal. Netaji Subhas Chandra Bose offered a hundred thousand tons of rice for relief of the famine in Bengal. It was not accepted.

Cross examined by Prosecution Counsel

Mr S A Ayer said: Till the 10th of December 1940 I was a press correspondent. I was present in the Bangkok Conference in June 1942 as a spectator. I do roughly remember the resolutions that were passed there. I am not aware that the Japanese ever made a formal clarification of the attitude of Japan towards India. The fact that a Council of Action was appointed was announced by the Bangkok Conference. I am not aware of the proceedings of the Council of Action. I was in Bangkok in December 1942. Bangkok was the headquarters of the Indian Independence League. I was not aware of the proceedings of the Council

of Action because Rash Behari Bose had gone to Singapore at that time. The headquarters of the Indian Independence League was interested in the Council of Action. I got no official reports from Singapore. The President was in touch with the headquarters of the Indian Independence League for the carrying on of its normal functions to enable it to continue its functions. There were no formal communications between the council of action at Singapore and Bangkok, because the President and members of the council of action were all of them in Singapore at that time. I have no official knowledge of the proceedings resulting in the resignation of all the members of the council of action except Rash Behari Bose.

I do remember that some resolution concerning the properties of Indians in these territories, who had left East Asia, was passed, I do know, for instance, in Burma that the properties of absentee Indians were handed over to the absentee Indians Property Association and that association was looking after the interests of those absentee Indians. It was in charge of an Indian—I do not know the details of it. The association was working under the direction of the Indian Independence League. The Indians in Burma appointed this association.

I was appointed to take charge of the publicity department in July 1942. My exact duties as a minister of the Provisional Government were to give publicity to the activities of the Provisional Government and the Indian National Army and to carry on propaganda directed to the people in India through the short-wave radio, to arrange public meetings with the help of the machinery of the Indian Independence League, and generally to do the publicity and propaganda activities of the provisional government.

The Indians in Malaya and then in Burma agreed to donate a certain percentage of their property to the Provisional Government. This proportion varied. At a very late stage Karim Gani also became a member of the Netaji Fund Committee in Burma—between January and April 1945. Karim Gani was not in control of the collection of funds earlier than January 1945. There was no charge against him of extorting money, that I am aware of. He was not arrested, but he was kept in detention under the orders of Subhas Chandra Bose. I am not aware of the reasons. There was an inquiry held as to his activities in connection, first of all, with the celebration, in regard to the collection of materials for Netaji's birthday. I am not aware of any specific charge against Karim Gani. They appealed to the public to collect cloth for the army—to give at least one yard of cloth per Indian. They wished that every man should do this, but there was no question of compelling each Indian to do so.

I am not aware of the details of the raising of the Indian National Army. I know that the army was raised voluntarily, from a number of speeches which Subhas Chandra Bose made, concerning the raising of the army, and addressing the army itself. As far as I know, no compulsion was used at all. I am not aware of any compulsion being used. I remember having seen this pamphlet, our struggle Exhibit AAAAAA) after I went to Singapore. This was after March 1943, when I came to Singapore.

I was in Bangkok. I did not read that pamphlet in detail, I just glanced at it. I am not personally aware of any atrocities of any nature committed on Indians to join the Indian National Army. I categorically deny that I am aware of any atrocities committed on Indians to compel them to join the I N A after December 1942. I am not personally aware of the Japanese having taken any part in the formation of the I N A.

The Japanese recognized the Provisional Government of Azad Hind. The recognition was publicly announced by Netaji Subhas Chandra Bose himself. The Gazette of the Provisional Government of Azad Hind published the official declaration.

The Indian Independence League had various departments which were in the charge of Secretaries—there were Secretaries of Departments and whatever policy was laid down by the Provisional Government was put into actual execution by the Secretary with his staff in the League. By policy I mean any decision taken by the Provisional Government, which was immediately communicated to the Secretaries of the Departments concerned by the Minister and they put into execution.

The broadcasts were not controlled by the Japanese. Officers of the I N A. were not made to broadcast, but they voluntarily offered to broadcast. I deny that I N A. officers were made to broadcast on plans laid down by the Japanese.

The offer to send rice to Bengal was made through the Radio to the people of India for information and to the British authorities in India so that they could consider the offer. This broadcast was I believe, made either in July or August 1943. The offer was made by broadcast from Singapore. The rice was to be sent from any Port in Burma, I believe. I could not tell you whether it was said on the Radio that the rice was to be sent from any Port in Burma, but I remember that it could be sent from any Port in Burma if the British authorities in India could vouchsafe safe conduct. The people of Burma were not starving for want of rice.

Re-examined by Defence Counsel

Mr S A Ayer said General Tojo arrived in Singapore in July 1943 and met Netaji Subhas Chandra Bose.

Lt-Col. A.D. Loganathan Azad Hind Government's administrator of the Andamans examined by Defence Counsel said On the 15th February 1942 I was in Singapore and was in charge of No 19 Indian General Hospital. I surrendered along with the others. The usual casualties used to pour into the hospital even after the surrender. About 50 per cent were battle casualties and the other 50 per cent were the usual medical cases. As part of my duties I visited the various parts of Neesoon camp. The Neesoon camp was built for 2 000 men but there were about 12 000 men there huddled together. There were four hospitals in Neesoon camp originally. They served the whole of the prisoners in Neesoon camp. About September 1942 I became a member of the I.N.A. I attended the conference at Bangkok. There were all told about 110 delegates from all over the Far East—Burma, Philippines, Hongkong, Sumatra, Java, the Celebes, Borneo, Shanghai, Canton and Indo-China. Sixty or 70 resolutions were passed. The chief thing was for all the Indians to organize themselves especially the civilians to have branches all over the Far East so that all the Indians might be brought together under one organization to enable them to have security and safety of life and property and for their general welfare. One of the resolutions was to raise an army and that anything done by this movement should be in conformity with the Indian National Congress activities.

There was a crisis in the I.N.A. in December 1942. I know Captain Mohan Singh. When I joined the I.N.A. he was G.O.C. The relations between Capt. Mohan Singh and Rash Behari Bose were not very happy. Rash Behari Bose having lived so long with the Japanese was inclined to be guided and controlled by them. Whereas Mohan Singh said he felt that the Japanese should be dealt with a firmer hand than what Rash Behari would be able to do. The I.N.A. was a branch of the Indian Independence League. As Mohan Singh was not very happy with Rash Behari Bose, he took a lot of responsibility on his own shoulders in dealing with the Japanese. At the time of the crisis Mohan Singh used to ask some of the officers to meet him in his bungalow. I was one of them. Mohan Singh explained to us that the Bangkok conference resolutions had not so far been

ratified by the Japanese. His demand that the I N A. should be recognized as an allied army had not been forthcoming. There were a few.

A-A Companies which the Japanese were using for defence purposes, at which he protested strongly because he thought they should not be under the Japanese control but should be handed over to him. They did not hand over these A-A. batteries till Subhas Chandra Bose came. The Japanese had arranged for a ship to transfer some I N A. troops to Burma. Members of the Council objected to the troops being sent without their knowledge because any action regarding the I N A. must be with the consent of the League. Mohan Singh told us that it was impossible to carry on in these circumstances and that he was going to dissolve the Indian National Army. Mohan Singh was arrested and taken away under the orders of Rash Behari Bose. The Indian National Army was then dissolved under Mohan Singh's instructions. He had issued an order of the day saying that in case he was arrested action should be given to the instructions which he had left under a sealed cover.

The members of the Council at this time were Mr. Raghavan, K. P. K. Menon, General Mohan Singh and Col. Gilani. The president was Rash Behari Bose.

After December 1942 I was in Bidadari, the headquarters of the I N A. I was in charge of the Medical Department. I knew Subhas Chandra Bose. I met him when he arrived in Singapore. That was on July 1943. I was present when the provisional Government of Azad Hind was formed. I was one of the Cabinet Ministers. I was also Director of Medical Services, I N A. In November 1943 Subhas Chandra Bose went to Tokyo. In the beginning of 1944, the Provisional Government moved to Rangoon.

At the Far Eastern Asiatic Conference, the Andamans and Nicobar Islands were ceded to the Provisional Government. On February 1944 I went to Port Blair. After I had been there 2 or 3 weeks we had a ceremony, at the Indian Independence League headquarters at Port Blair. The Rear-Admiral in charge as well as the Army Commander there, one Major General, attended the function and the Andamans and Nicobar Islands were handed over to me as Chief Commissioner. Subhas Chandra Bose appointed me as Chief Commissioner. He was at that time the head of the Provisional Government. I was instructed to take five persons with me when I went from Singapore. Major Alvi was my next senior. Lieut. Sobha Singh and Lieut. Mohammed Iqbal accompanied me with their scribe, one Mr. Srinivasan. That was my staff. When I reached Port Blair there was a civil administration functioning. Major Alvi was in charge of the Education Department in the Andamans. Lieut. Sobha Singh was in charge of revenue and finance and Lt. Iqbal was in charge of police. With the help of the local administration I began to administer these islands. I administered the islands as long as I was there, that is until September 1944, when I returned to Singapore. In November 1944 I submitted a report of my administration to Subhas Chandra Bose. Netaji Subhas Chandra Bose wanted me to go to Rangoon to give him the report personally and to accompany him to Tokyo where he was going, so that I may represent any difficulties to the Foreign Office there. As I was too ill at that time and confined to bed I could not go. When Subhas Chandra Bose returned from Tokyo to Singapore I gave him the report.

Major Alvi was appointed officiating Chief Commissioner in my absence. During my administration the islands were renamed Shahib (Andamans) and Swaraj (Nicobars).

The I N A. was purely voluntary. As far as I am aware no coercive methods were used in recruiting. I am aware as member of the Provisional Government that we declared war on Britain and America. The I N A. was a source of great strength to the civilian population. When I surrendered myself at Rangoon, far about a fortnight we took charge of the whole Rangoon area and maintained law

and order. That was the instruction left behind by Netaji. When the Japanese invaded nearly 10,000 Indians were murdered and to prevent such a calamity we were charged with the responsibility of saving life and property of all the civilians, be they Chinese, Burmese or Indians. Both in Malaya and in Burma civilians were recruited for the I.N.A.

Cross examined by counsel for prosecution

Lt.-Col. Loganadan said. My authority for the statement that the Andamans and Nicobar islands were ceded to the Provisional Government of Azad Hind is a broadcast from Tokyo. I cannot remember the exact wording of the broadcast.

Q I put it to you that the Andamans and Nicobars were never ceded by the Japanese to the Provisional Government of Free India.

A I would not have gone there if they had not been ceded.

Q I put it to you that all they did was to promise to give them after the war was over.

A No.

Q I put it to you that they said that for the duration of the war they would only transfer such departments as did not interfere with the defence of the islands.

A That is true.

Q I put it to you that the only department which was completely handed over to you was the Education Department.

A The only department which I took over was the Education Department.

Q Did you refuse to take over the other departments?

A If the Police Department was not handed over to me I was not prepared to take over the other departments.

Q The Police Department was not in fact handed over?

A Up to the time I left the Police Department was not handed over.

Q I put it to you that the other departments were also not handed over.

A I refused to take over the other departments. It was not correct that the Japanese took all children of full age to their own Nippongo school. They had a Nippongo school where they had a few students. This had nothing to do with our education department at all. I used to submit a monthly report to the head of the state. I sent my report through the Japanese because there was no other communication. I had no arrangements for my own communications. I sent my reports sealed and asked them to send them on to the Head of the state. In one case the Japanese sent me my report with the request that I should change it in one or two places because there were one or two points which might be dangerous if it got into enemy hands. I asked for a radio set and they said they would get me one. There was a great shortage and the Japanese said they could not find one immediately.

When I was sent by Subhas Chandra Bose to the Andaman and Nicobar islands, a letter of authority was given to me. The original letter given by the Japanese Foreign Office to the head of the state, Subhas Chandra Bose, was handed over to me to be taken with me to the Andamans and kept in my file in the Andamans. I was the Chief Commissioner of the Andamans. The Governor was to be appointed after taking over all the departments.

Judge Advocate Do you agree or not agree that the powers given to you were those in para 3 of the annexure to Exhibit 5E?

A It is a fact, as far as that letter is concerned, that my instructions were such, but my contention is this that these instructions were governed by the letter given to me by Subhas Chandra Bose (Exhibit 5D) because (Exhibit 5D) gives me wider powers.

Cross-examined by Counsel for Prosecution

Verbal instructions were given to me before I went to the Andamans by Subhas Chandra Bose as to what I was to do there. The instructions were that, consistent with the local difficulties, I should as soon as possible take over the whole of the islands. That was all. I made reports to Subhas Chandra Bose once a month. Refreshing my memory from my diary, which I used to keep at the time, I can state that the date of the taking-over ceremony of the Andamans was the 21st March 1944.

From time to time the Civil Administrator and myself would discuss the feasibility of taking over the departments one by one. I was asked to take over all the departments excepting the Police Department and my position was that without the Police Department I was not prepared to take any other department.

Just before my departure from the Andamans in September, an offer was made to hand over departments to me. As soon as I received a telegram from Netaji to see him I suspended any action I wanted to take. The object of the administrative and consultative committees was that the civilian elders could take part in the administration. These were in existence before my time.

With regard to the investigation of spying, the Japanese had their own police. They did not object to our association but they would not completely give over the investigation to us. We were not satisfied with the investigation which they were carrying out. We could investigate on our own but they would not let us do that. One of my officers was attached to the Police Department and he was allowed to take part in the investigations to a limited extent but not investigate on his own.

With regard to the sentence "This is the only department which more or less has been handed over to us" the words "more or less" mean that for defence purposes the Japanese would take over one or two schools without much notice. That is the intention of the words "more or less", to say that we were not complete masters of all the details. I would not necessarily have written this if I had not asked for a department to be handed over. I should not say that there is a grievance in those words.

With regard to the statement that "a few of them are said to have died of illness developed while under trial" it means that they died under torture while in police custody. That was what I meant to convey. I could not put that in such simple terms, because, as I said, my letters were being scrutinised. I wanted the report to reach the other end so I had to couch the terms and convey the meaning at the same time. Up to that time, as I have said, I had received no communication except the two cables. If I wrote something which was unpalatable to the Japanese in one of my letters, they would either suppress it or ask me to alter it. When I was in the Andamans, gross atrocities were committed by the Japanese in spying cases. I was aware of that, but I was unable to remedy the matter. I wanted to let the Head of the state know that every report was being scrutinised by the Japanese authorities. I came to know of it unofficially—not in writing. By the words "Japanese methods" in my report, I mean gross atrocities.

As regards the self-sufficiency programme, I went to the villages and gave lectures. Apart from running the schools and the self-sufficiency programme, my administration comprised nothing else. Education Department consisted of running

the schools That is all. There were about 30 or 33 schools. We had our own funds for running these schools.

The funds for running the schools were issued by the Japanese to me as a loan. The sums were not repaid by the time I left. I have not worked out how much this sum would come to per month. I never knew what it cost to run these schools. Teachers were there and they continued to work, if a vacancy arose, I filled it. The Police Department, though it was not under me, I was working at it. As I told before, I could not investigate independently and completely, so I was interested in every case of spying and with the help of my staff I used to get as much information as possible about these cases and then I used to represent my point of view to the higher authorities. Iqbal was the Chief Justice of civil cases and he used to show me all the work that he was doing there. Iqbal's work referred to decisions in civil cases. There was no other court for civil cases. He passed decrees.

Except for domestic purposes the Provisional Government of Azad Hind incurred no expenses with regard to the administration of these islands. Domestic expenses were only being accounted for as Rs. 3000 in exhibit MMMMM. Other than the loans received from the Japanese, there was no other expenditure by the Provisional Government of Azad Hind for the period in which I was in the administration of the Andaman and Nicobar Islands.

I had suggested on Page 2 of the document that 5 or 6 lakhs of Indian currency would be required. The Sherikan said that in the interests of defence measures it was not advisable to send that in an open letter. Because I had mentioned 5 or 6 lakhs he said that would give an indication of what was happening in the country that is if the amount of money were to be known to the enemy. The contents of that paragraph were never transmitted by letter but I told the Head of the State about it when I met him.

On reopening of the Court on December 12, the cross-examination of Lt.-Col. Loganadan was continued.

Lt.-Col. Loganadan said. I mentioned that Iqbal was trying civil cases in the Andamans. He used to deal with small cases concerning loans of money and money not paid back and mortgages on buildings and family disputes, more or less social. When I went to the Andaman Islands, the Japanese had a Supply Department. That continued after my arrival. The self-sufficiency programme was carried out under the instructions of the Japanese Supply Department.

My intention in saying in the report marked NNNNN that they are getting to know the Japanese officers better and it is hoped that greater trust would be the result was that in this particular spy case Lt. Iqbal was investigating he was not very happy about it and the Japanese were not very happy about our interfering. There was not lack of trust in every case between the Japanese and ourselves. This was only in reference to police cases. I left the Andaman Islands because of a message I received at the end of September from Mr. Subhas Chandra Bose. He called me in order to make a personal report about the progress I had made during my stay in the Andamans. Alvi was appointed officiating commissioner in the Andamans during my absence. I suppose that I held the post of Chief Commissioner when I left to report to Netaji, because I was going there to report in that capacity. I went to Singapore from the Andamans. I was asked to go to Rangoon but I went to Singapore because I was ill and could not go to Rangoon. When I was in Singapore I did not receive reports from the Andamans. I was not in touch with the happenings in the Andamans after I left the Islands.

Before my departure from the Andamans I did not tell the Vice-Admiral and Civil Administrator that I was going to recommend the withdrawal of

the Provisional Government from the Islands I did not send any telegram myself to Netaji Subhas Chandra Bose after my arrival in Singapore recommending the withdrawal of the Provisional Government from the Andaman and Nicobar Islands

A copy of the telegram was sent to me by Col Bhonsle after the telegram had been despatched I did not quite approve of the wordings of the telegram The 'L' in the entry refers to myself, and the 'A' to the Andamans. Col Bhonsle sent the telegram and afterwards he sent me a copy of the telegram I did not think it was worthwhile taking steps to correct the false impression created by a telegram which had already been sent

Q I put it to you that the method of recruitment in the Indian National Army included bribery?

A Not to my knowledge

Q Taking refractory persons to concentration camps?

A Not to my knowledge.

Q And that special methods were adopted, e.g., beating, taking individuals through manholes, into sewers and making them stand until they volunteered and other forms of torture?

A Not to my knowledge Witness continued A case of gross brutality was reported to me and I referred the matter to A Q for investigation I heard there was a Court of Enquiry I have no knowledge of patients being admitted to hospital suffering from severe injuries through being beaten This was the only case reported to me on which I had taken action My work was to supervise the hospital I was not in charge of the cases but I went round inspecting the patients as part of my duty

The Administrative Committee was called the Executive Committee, which existed for two or three days After two or three days General Bhonsle was appointed Director of Military Bureau and Zaman Khan was appointed Army Commander I was appointed as the DMS and so the organisation started with specific officers appointed At that time my appointment was known as Deputy Director of Medical Services When the Director of Military Bureau started his work, I was appointed Chief Administrator That was about April 1943 I occupied that position until I went to the Far East. This was about the end of August 1943

From the 24th April 1945 for about a fortnight we garrisoned the whole of Rangoon town I saw Subhas Chandra Bose before his departure from Rangoon and wished him good-bye I am not quite sure he was due to leave on the 23rd but left on the 24th or 25th I was appointed General Officer Commanding, Burma Command, to come into effect after his departure I do not know whether the Japanese commercial firms started to evacuate Rangoon about the 21st April There was quite a lot of movement of troops about the 23rd April, but I do not know when the Japanese finally evacuated Rangoon I cannot say whether the Japanese guard abandoned the Rangoon jail on the 30th April, but I know that they did abandon it I do not know of a Proclamation made by the Burma Army on the 1st May 1945 By my statement that the INA took charge of law and order in Rangoon for about a fortnight, I mean the period between the departure of Subhas Chandra Bose and the entry of the British troops into Rangoon.

Mr Dina Nath, a former timber merchant of Rangoon, was the eighth witness. In his examination in-chief witness said

I am aware of the Indian Independence League I was a member of the Indian Independence League, Rangoon branch, I know of the formation of the Provisional Government of Azad Hind. There was the Azad Hind Bank.

The Chairman of the Board of Directors was Mr S.A. Iyer Mr S.M. Bashir was a director Mr H.R. Betal was another director Mr A. F. Madha, Col. Alagappan and myself were also directors. Contributions were made to the Provisional Government of Free India in Malaya. There was what was known as the Netaji Funds Committee organised in Rangoon. The object of the Committee was to collect funds from the public as contributions towards the Provisional Government of Azad Hind. The collections in Burma were banked with the Azad Hind Bank as also with the Finance Department of the Provisional Government of Azad Hind. The donations used to be in cash as well as in kind. The funds of the bank were drawn upon from time to time for purposes of the Provisional Government. In Burma the contributions in cash and kind were over 15 crores. I do not know exactly about Malaya but the contributions there were approximately 5 crores. These amounts are in rupees. The rupee was considered equivalent to the Japanese yen. Private individuals also banked with the Azad Hind Bank. The total amount at the Rangoon Branch used to be between 30 to 40 lakhs. The bank continued to function from April 1944 up to the middle of May 1945. After the occupation of Rangoon by British forces the bank was sealed up by the British military authorities. The amount to the credit of the I.N.A. at that time was 35 lakhs.

I know an estate in Burma called Ziawadi. It had an area of about 50 square miles. At first it was administered by the Manager of the Ziawadi grant. Thereafter it was handed over to the Provisional Government of Azad Hind and their representative was administering it then. This representative was appointed by the Revenue Ministry of the Azad Hind Government. There was one big sugar factory on the estate. The population was about 15,000, mainly consisting of Indians. The produce was all handed over to the Provisional Government to be utilised by them in the manner they thought best.

There were branches of the Indian Independence League all over East Asia. The activities of the Indian Independence League, so far as I personally know of them are these. They worked as an executive body to carry out the instructions of the Provisional Government of Azad Hind. Each branch had various Departments dealing with various activities. For example, it had a Finance Department, a Recruiting Department, a Training Department, Propaganda Department, Welfare Department, A.R.P. Section, Women's Section and Boy Scouts Section. The League branches looked after the interests of the Indians and one of the main functions in this respect was to look after the absentee Indians' properties, provide relief to the suffering people, to do A.R.P. service and each branch had also opened schools for the education of children.

As far as I am aware the I.N.A. looked after the property and life of the Indian civilians living in Burma. They also saved the Indians from the hands of the Japanese military police who at the slightest possible information, used to arrest the Indians as British spies or on other espionage charges.

Cross-examined by prosecution counsel

Mr Dina Nath said. The I.N.A. looked after the property of Indians. If the Japanese Govt or the Military wanted to requisition anybody's property and it was brought to the notice of the I.N.A. they always approached the authorities and saved it. I was a member of the Netaji Fund Committee and a member of the Supply Board. This was a Board set up to purchase materials for the I.N.A. It was set up in April 1944. Mr A. Habib was the chairman of this Board. Its members were Mr Khanna, Mr H.R. Betal, Mr A.R. Nizami, Mr Raghavan Finance Minister, Mr Das the General Secretary of the Indian Independence League, Col. Sahgal and Mr Sarkar. They made purchases of cloth for the army.

from the local merchants I took an oath of allegiance as a member of the Indian Independence League in June 1944. Apart from being a director of the Azad Hind Bank, I had nothing else to do with the Provisional Government. This Bank was registered in Rangoon like any other public bank. There were shareholders in the bank. The capital of the bank was 50 lakhs. The bank paid interest on money deposit. They also paid interest on the moneys deposited by the Provisional Government of Free India. The bank acted as bankers to the Provisional Government just as it acted for its other constituents.

I have some personal knowledge of the donations in Malaya. These donations or the means available through these donations were discussed at the meetings of the Supply Board. The money deposited by the Provisional Government was in the name of the Finance Minister. It always remained in that name. The I N A had a separate account. It remained in that name until the end. The account was opened as soon as the bank opened, that is, in April 1944. All the money was in Japanese occupancy notes. There were also British currency notes and British coins. There were about 50 to 60 thousand rupees in British currency notes. Public deposits used to be about 30 to 40 lakhs. The money in the name of the Finance Minister varied considerably. It used to be anything from about 15 lakhs to even one crore. A monthly allotment used to be made by the Finance Minister and it used to be about 10 to 30 lakhs per month. The highest deposit I remember in the name of the Finance Minister was somewhere about 1,25,00,000 rupees. The highest deposit I remember in regard to the I N A was about 30 lakhs. Certain remittances of donations from districts used to be sent directly to the Finance Department. Some they put directly in the bank, some they utilised for their needs. When I say that funds were drawn upon from time to time for the purposes of the Provisional Government of Free India, I say that from the entries in the books. I do not know for what particular purpose the money was used. The account was in the name of the Finance Minister and the cheques were drawn by him. In Burma the donations were over 15 crores. I say this because I was a member of the Netaji Fund Committee which was keeping records about these matters. The amount of 15 crores was collected between January 1944 and the end of April 1945. I was in Rangoon when the British entered Rangoon. I remained there until the 1st of June when I was arrested and brought over to India. When the bank was sealed up after the British entered Rangoon, there was a credit of 35 lakhs belonging to the Indian National Army. All the money that was in the name of the Finance Minister was put in in the account of the I N A. I have no exact idea of the amount. After the British occupation we had a meeting of the Directors in which we reviewed the situation about the bank and it was there that the figures were put forward; and about 35 lakhs were in the credit of the I N A. That was about the 7th or 8th of May 1945. I myself did not see the books before the bank was sealed. The statement of accounts was produced by the Manager which I saw. It was not up to the date of my seeing it, but it was up to the 4th or 5th of May, or something like that. The bank was sealed on the 19th of May, 1945. Even after the date it was sealed there were some moneys deposited, but I am not very sure about it. In a verbal conversation, the Manager said that with regard to the I N A people he was still accepting money because they had no other place to keep it. What I mean is that the I N A individual soldiers used to deposit money. I do not know whether 20 lakhs were drawn out from the account of the I N A on the 14th of May 1945. After that meeting we had authorized the Manager to issue notices to the depositors and to pay out whoever came forward. I do not know who was authorized to draw on the I N A account after Mr Subhas Chandra Bose left Rangoon.

I have not seen any document regarding the Zia'wadi Estate. This estate belonged to a man named Mr Parma Nand. I am not sure whether he was

the manager or the owner. I think Ziawadi Sugar Company is a part of the Ziawadi Sugar Estate. I do not know personally who were the owners of the Ziawadi Estate. It was handed over to the representative of the Provisional Government of Azad Hind by Mr Parma Nand. At a public meeting at which Netaji spoke and appealed for funds, Mr Parma Nand came up and announced 'I formally hand over the estate to the Provisional Government of Free India today'. This gentleman was Minister of Supplies. I am not sure whether he was Minister of Supplies at that time or not, but he was Minister of Supplies at some time. He did not continue to administer the estate. It was a representative of the Provisional Government of Free India who administered after that. The factories there were also run under the control of the I.N.A. The Finance Department got the proceeds credited in the Bank. I do not know what happened to this estate afterwards.

When I mentioned recruiting I meant recruiting for the I.N.A. By propaganda I mean propaganda for the Provisional Government of Free India and I.N.A. When I mentioned protection, I meant protection against air attacks and helping the victims. When I mentioned the Women's Section, I meant an organisation of women who gave their support to the movement and used to collect funds for the movement and enlist women for the Rani of Jhansi Regiment. The main job of Boy Scouts used to be welfare work during air raids and other periods.

Re-examination was declined

Mr Shriv Singh the ninth defence witness, was then examined by Defence Counsel. He said —I was a member of the Indian National Army and I am now also. I came to Burma in August 1942. I know of a territory called Ziawadi. I lived there from August 1943 to April 1945. I was sent there to open a training camp and I was in charge of it. After that I was given various other small jobs. The Indian population of that area was approximately 15,000. Besides the training camp a poultry farm was opened there for the I.N.A. and at that place there was a Base Hospital of the I.N.A. Also there was a Convalescent Home. There was also a Home for the Disabled. At that place there was a Sugar Factory and there was also a big office of the body called Azad Hind Dal. The object of the Azad Hind Dal was to administer the areas conquered by our army and also those areas which were under our government. I refer to the Provisional Government of Azad Hind. Lieut. Vittal Rao was in charge of the Azad Hind Dal and Mr B. Ghosh was in charge of the Public Works Department. Neither the Japanese nor the Burmese had anything to do with this area. Many times there were misunderstanding with the Burmese and Japanese Governments and our Provisional Government removed them. General Chatterji had been appointed Governor Designate of the liberated areas. His headquarters was at Ziawadi.

Cross-examined by Counsel for the Prosecution

Mr Shriv Singh said. In 1941 I was in the 5/2nd Punjab Regiment. I took part in the fight against the Japanese. I was captured near Ipoh in January 1942. After the formation of the Indian National Army and the Provisional Government, I volunteered to fight for my Government. This was in August 1942. I deny that I volunteered to fight the British shortly afterwards. I broadcast what the treatment of the Japanese was to me after I was captured. I did it of my own free will. It was for the benefit of the many troops that had been left by the British in the jungles so that these troops may be able to get together. I deny that I broadcast asking Indian soldiers to come over and fight on the side of the Japanese. I first spoke to Mohan Singh in March 1942. I met him in Singapore. I lived for four or five days in a house next to his. After my capture at Ipoh I was

sent to Kuala Lumpur after some days. From there I went to Saigon. I did not know why the Japanese took me there. In Saigon I was taken to Col Saito. I was told about the aims of the Japanese. He did not ask me to join any army to fight against the British. I did not meet Major Fujiwara at Saigon.

I heard about the I N A. at Bidadari. I did not persuade any people to join the I N A at Bidadari. I was not persuaded by any one to join the I N A. In the camp in which I lived there were no lectures. I was there for nearly two months. I never heard any lectures. I went to Bangkok for the Bangkok Conference at the instance of the I N A. Headquarters. The Bangkok Conference was held in June 1942. At that time the Azad Hind Fauj had not been organised. I recorded one lecture by General Mohan Singh. I returned from Bangkok to Singapore. I went to Rangoon in September 1942. A special party was sent under Col Gill and I was also in it. I had joined the I N A but I was not prepared to work till I was satisfied that the Japanese Government recognised our Azad Hind Fauj and the Provisional Government. I was told to proceed to Arakan and to reconnoitre and to return and make a report. I did not hear at that time of a crisis in the I N A in December 1942, but I heard about it some time afterwards. I did not attempt to escape to India in December 1942. I was afterwards sent to Mingaladon Camp. Here there were other men of the I N A. I was arrested in the beginning of 1943 by the Japanese. I did not know why they arrested me but the whole party belonging to Col. Gill was arrested. I was under arrest for nearly one month. After that I was released. I was then sent to a camp of the I N A. I joined the I N A from the time the Japanese recognised the I N A. and the Provisional Government. That was in September 1943. I was in the I N A before also but I did not start work till September 1943. I went to the Arakan in October 1942. At that time none of the I N A men took part in any operations. At the time when I was sent to Arakan, the I N A or the Provisional Government had not declared war against the British or the Americans. I went as a member of Col Gill's party to Arakan and at that time it was not the purpose of this party to fight the British.

I was a lieutenant in the I N A in 1944. In August 1943 I was sent to Ziawadi to open a Training Camp for the I N A. I know Sen Gupta, not Thakin Sen Gupta. I met Sen Gupta in October 1944. I did not express a wish to him to escape to India. I had no contact with the Burmese Guerilla soldiers, but I knew about them. I was not at Pegu in February 1945. I did some work which was useful to the I N A and to the Provisional Government. I will give full details of that when I am tried by a Court Martial. I deny that I supplied information to the British at the end of 1944 or the beginning of 1945. I know Capt Brown. He was once captured by the I N A troops and I saw him after that. I never saw him before his capture. I did not tell Capt Brown, but there was a Burman whom I contacted. I did a trick to save the Ziawadi Estate, the I N A, and the Provisional Government. I told the Burman that we had hospitals in Ziawadi and there were no fighting troops, and that we did not have any defensive position in Ziawadi. This was for the purpose of saving this area from bombardment and guerilla attacks. I deny that I was paid one thousand rupees for giving this information.

Ziawadi Estate belonged to an Indian. Our Government took possession of the estate because that Indian was not there. Parmanand was the manager of the estate and the Sugar Factory. I know of the arrangements made by the Government after taking possession of the estate. In that estate there is a palace and I saw the palace and the Raja is still alive in India. I know that there had been an agreement between the Japanese Government and our Government that our Government was to be the master of all that property which belonged to other owners who were not present. Ziawadi is in Burma. In June 1944 the Japanese were in occupation of Burma.

Re-examined by Defence Counsel, Mr Shiv Singh said When I saw Col. Saito, he told me that Japan was fighting for the freedom of the whole of East Asia in which India was also included

At this stage the Court adjourned to meet on December 13, 1945

Court Proceedings on December 13

Mr B.N Nanda, Commonwealth Relations Department of the Government of India in his examination in chief said From my official records I find that before the outbreak of the Japanese war the Indian population in Burma was 1 017 825 in Malaya it was approximately 8 lakhs in Thailand 55,000 in Indo-China it was 6 000 in Hong Kong 4,745 in the Dutch East Indies about 27,000 in French Indo-China about 6,000 and in Japan about 300

Cross-examined by Counsel for Prosecution

He said In accordance with official records only 54 Indians remained in Japan after the outbreak of the Japanese war I have no statistics which would give the number of Indians who left these countries after the outbreak of the Japanese war

Lt-Col. E K. Esquire, A.A.G Headquarters, Jumna Area, being duly sworn in is examined by Counsel for the Defence.

I am A.A.G Headquarters, Jumna Area. I was asked by the defence in this case to procure documents from overseas. In response to this request the Convening Authority took steps to procure certain documents from the Government of Japan I produce letter No C. Z. 49, dated October 26 1945 from the General Headquarters, United States Armed Forces Pacific, which forwards a reply from the Japanese Government concerning these documents, together with four annexures A, B C and D which have already been handed over to the Court.

These are annexures to the letter which I have produced. (Witness is shown SSSS TTTT, UUUU VVVV which are identified.)

I also produce certain radio transcripts which have been received from the Monitoring Section General Headquarters India.

(Note by the Court—Counsel for the Prosecution intimates that he admits the fact that this transcript was taken by the Simla Monitoring Section, G H Q., and that it purported to be a broadcast by the B.R.C. General Forces Broadcast and by Berlin Radio and that it was duly taken in the course of official duties by a public servant and he does not deny the authenticity of the source which is General Eisenhower and the Berlin Radio) Radio broadcasts are read marked 5S signed by the President, and attached to the proceedings.

Capt. R. M. Irshad examined by Counsel for the Defence said My Indian Army Regiment was the 5th Battalion and Punjab Regiment. I was in Singapore at the time of the British surrender I was present at the meeting at Farrar Park on the 17th of February 1942 On the 16th evening our Commanding Officer received orders that the British Officers would be separated from the Indian ranks and the Indian officers as well as the Indian ranks would march to Farrar Park on the 17th morning Accordingly we marched under the command of Capt. Balwant Singh and arrived there at about 9 a.m. When we arrived there, we discovered that there were quite a number of other units already collected there. There were no arrangements for our reception and we pitched on the first available spot and put our soldiers there. In the afternoon orders were passed that we should collect in front of the Farrar Park Stadium We collected there—all the officers and Indian ranks that were present. The officers were told to come out in

the front which we did. When the parade was ready, we saw a British officer, the rank of a Lieut-Colonel—later I learnt that his name was Col Hunt from Malaya Command Headquarters came in front of the microphone which was fixed there and called the parade to attention. Along with him was a Japanese officer, whose name I later learnt to be Major Fujiwara of the Japanese Imperial forces. Col Hunt brought us to attention and he addressed us. He told us that the British and Indian forces in Singapore had surrendered to the Japanese Imperial Army and we were all prisoners. He said that on behalf of the Crown he was handing us over to Major Fujiwara, the Japanese representative, and he also told us, "From now on you belong to the Japanese Army and you will have to obey their orders as you have been obeying our orders." When he finished his speech, Col Hunt handed a few papers over to Major Fujiwara and then Major Fujiwara addressed us on the microphone. He spoke to us in Japanese which was translated into English by a Japanese officer and subsequently translated in Hindustani by another Indian officer. The purport of the speech was that the Japanese Army had defeated the Allied Army in Malaya and Singapore and the Japanese Armies were pushing forward to Burma. Then he explained to us the reasons for the war. He explained to us the meaning of 'co-prosperity sphere', and what the Japanese intentions were in the Far East. He told us that the Japanese wanted all the Nations in East Asia to be free and independent. Then he explained the attitude of the Japanese towards India. He said that the co-prosperity sphere in the Far East could not be safe without an independent India and the Japanese wanted to see India free. He said that the Japanese had no other intentions towards India except to see the Indians free, and he said that the Japanese Government was willing to afford every help and co-operation to Indians for the achievement of this goal. Further on he addressed us and said "you are Indians and you should also work for the independence of your country. We do not consider you to be prisoners of war. As far as we are concerned, you are free, and, as such, I hand you over to Capt Mohan Singh", and he indicated an officer standing next to him, "and you will obey his orders as you would if you were under our charge."

After this speech Capt Mohan Singh, the officer who was standing next to Major Fujiwara, spoke to us for a few minutes. He told us that in the Malaya campaign the Indian Army had not been given a chance to fight because the campaign was short. Moreover there were no supporting arms and aeroplanes to help the infantry and accordingly for those reasons Malaya had been lost and the prestige of the Indian Army was low. Then he said, "As a matter of fact, the Indian Army has been let down." He went on, "Now is the time for the Indians to fight for their independence. So far India had been lacking in armed force of its own, but here is the chance of raising an armed force to fight for India's liberation." He told us that his intentions were to raise an Indian National Army from amongst the prisoners of war collected there. When and if this Army was raised, it would fight shoulder to shoulder with the Japanese who had promised full support for India's independence, and this Army would do its best to liberate India. That was the purport of his speech. His speech was acknowledged with loud cheers by the crowd. The crowd consisted of many units of the Indian Army—prisoners of war—and I should say the strength was about forty-five to fifty thousand.

I joined the Indian National Army at approximately the end of July 1942. I know Capt Shah Nawaz, Capt P K Sahgal, and Lt G S Dhillon, whom I recognize as accused before the court. Capt Sahgal joined the I N A in August 1942. My reasons for joining the Indian National Army were many. I admit that it was a difficult question to decide whether I should join the Indian National Army or not, because there were many factors which I had

to consider. It was a momentous decision. Uptil that time I was not greatly interested in politics or the political welfare of India because I was educated that way, and moreover when I joined the Indian Army in 1936 I felt that politics were not encouraged in the Indian Army and hence I stayed away. But when the question of I N A arose and we had to decide whether we should join it or not, I had to think deep but it was such a big question that I could not make a decision myself. I had to obtain advice from brother officers but I could not ask advice from officers whom I did not know. It was a question which had to be discussed, and all the pros and cons had to be gone through. I remember sometimes in the beginning of July 1942, when we were being asked whether we were going to volunteer for the I N A. or not. I was staying at Mount Pleasant, Singapore, where Capt. Mohan Singh had his headquarters. I know Capt. Sahgal for the last 12 or 13 years. We were in the College together and we were friends there. I felt that if I had a discussion with him along with a few other officers, we may come to some decision regarding volunteering for the I N A. So in the beginning of July he and two or three other officers came to my bungalow at Mount Pleasant and we went through this question of joining the I N A. We discussed all the pros and cons and we unanimously decided that under the circumstances we all owed our allegiance to our country.

We also felt and agreed upon that so far concerning our career in the Indian Army there had been distinctions between the British Officers and the Indian commissioned officers. The Indian commissioned officers had not been treated as well as our English comrades or brother officers. We also felt that if the senior officers present in Singapore or in Malaya did not join the Indian National Army it was quite possible that the Japanese would exploit the Indian prisoners-of-war because then the Indian prisoners-of-war would be split up into small groups. Some people would join and some would not and the Japanese would take advantage of that and enrol people amongst the prisoners-of-war who would be willing to do any service for them. We felt that that would be a disgrace to the Indians. We agreed that if the senior officers joined the I.N.A. and formed a strong party and organised the I.N.A. as a regular army and fought the Japanese on every point regarding the army we would have a far stronger position with the Japanese than otherwise. We also felt that if we created an army of our own we may be able to establish a certain amount of standing with the Japanese and by doing so we may be able to stop the Japanese from committing any atrocities on the Indians in Malaya. We had seen what the Japanese were doing to the Chinese and Anglo-Indians and the Malaysians. They were not treating them very well. Certain atrocities had been committed on the Chinese and also on the Eurasian community and we thought that if the Indians refused to join the Indian National Army it was quite possible that the whole of the Indian community in Singapore or in Malaya might suffer. But then arose the question that if we did join the Indian National Army what would be the reaction of our people in India? Would they consider us to be traitors for helping to Japanese because we knew that the Congress in India had declared itself hostile to the Japanese, and doubts crept into our minds whether the Congress would accept our reasonings and arguments. But on that point we felt that if the Congress understood the circumstances then, and if we could show to the people of India that the Indian National Army was an army officered by Indians and not mere stooges of the Japanese and this army was specially recruited for the sole cause of liberating India then there was a possibility that the Congress and the people in India might be able to understand our point of view. These are the main factors which governed our thoughts and reasonings at that time and we decided that it would

be better for us under these circumstances to join or to volunteer for the I N A

I was in the first I N A H Q then, as General Staff Officer in G Branch. The first I N A was dissolved in December 1942. The I N A had been raised after the Bangkok resolutions were forwarded for ratification to the Japanese Government. We hoped that the ratification would come quickly, but as days passed by, Capt Mohan Singh, who was then the G O C of the Indian National Army, felt that the Japanese were delaying the ratification of the Bangkok resolutions and he asked the Japanese liaison body, which was attached to us, called the Iwa Kuru Kikan, to expedite the ratification of the resolutions. They were not very clear in their replies. They tried to delay it as much as possible. I was present. Capt Mohan Singh kept his headquarters informed of all the correspondence and the arguments which he was having with the Japanese. Capt Mohan Singh noticed that the Japanese were not playing the game, and he said that if the Japanese so persisted in their attitude he would dissolve the Indian National Army. We all agreed with him, because we felt that unless and until there was a clear understanding between the I N A and the Japanese we would not continue in the Indian National Army.

Besides there was another main point of dissension between the Japanese and Capt Mohan Singh. At the Farrar Park meeting the Japanese had handed over all the Indian prisoners-of-war to Capt Mohan Singh. Until that time the members of the I. N. A. as well as those prisoners-of-war who had not joined the I N A were under the command of Capt Mohan Singh. But in December the Japanese wanted to take those people away from Capt Mohan Singh who had not joined the I N A. Capt Mohan Singh felt that the Japanese were not keeping to their word and he refused to part with the prisoners-of-war.

Capt Mohan Singh had given us orders that if and when he was arrested, which was very likely, the I N A should automatically dissolve, and I think in the last week of December Capt Mohan Singh was arrested and at the same time and on the same day the I N A was dissolved.

I knew Rash Behari Bose. He was President of the Council of Action at that time. The Council of Action was the Governing Body of the Indian Independence League, East Asia. Rash Behari Bose agreed with the senior officers to a certain extent but he said that we must not hurry. He said that the Indian National Army did not belong to an individual, and by that he meant Capt Mohan Singh. It was an army of the Indians in East Asia and the Indians in East Asia were represented by the Indian Independence League. Therefore Capt Mohan Singh had no right to dissolve the Indian National Army and as such the I N A could not be dissolved. But we, senior officers, agreed with Capt Mohan Singh and told Mr Rash Behari Bose that since Capt Mohan Singh was arrested, we would not continue in the Indian National Army.

The relations between Capt Mohan Singh and Rash Behari Bose were not too cordial. Mr Rash Behari Bose ordered the arrest of Capt Mohan Singh. He himself arrived at the Headquarters of the I N A and collected the senior officers there and read out an order, signed by himself, ordering the arrest of Capt Mohan Singh. I was as present. Most of the members of the Council of Action had resigned by then. Before their resignation, the following were members of the Council of Action: Mr Rash Behari Bose was the President, Capt Mohan Singh, Lieut-Col Gillani, Mr Raghavan and Mr Menon were the members.

For a period of two to three weeks after the dissolution of the first I N A the members of the I N A considered themselves as prisoners-of-war. But the Japanese refused to take us back as prisoners-of-war. They said that we had given you your

freedom and since you have not committed any acts against the State we cannot take you back into arrest. They said this was our own question and we have to decide among ourselves but as far as we are concerned, the I.N.A. is not broken. There were many meetings between the senior officers and Mr. Rash Behari Bose and at times Col. Iwa Kuru was also present. I was also present at most of the meetings and we had further discussions then. We told Mr. Rash Behari Bose as well as Col. Iwa Kuru the reasons for dissolving the I.N.A. We told them that we were not satisfied with the treatment meted out to us by the Japanese. We wanted ratification of the Bangkok resolutions. Once we even refused to accept the pay which was being given to us. We told Mr. Rash Behari Bose that we were no longer in the I.N.A. and therefore we refused to accept any pay. But then Mr. Rash Behari Bose told us that you may accept it because this is my personal money. It has nothing to do with the I.N.A. or the Indian Independence League. Eventually after all these discussions the senior officers decided that the Indian National Army should be continued but with a few amendments. It was not to be one man's show thereafter. It was decided that there should be two headquarters, one called the Directorate of Military Bureau and the other Indian National Army Headquarters and under two separate officers. It was also decided that the recruitment for the second Indian National Army should be entirely voluntary. Every member of the previous I.N.A. should be once again asked whether he would like to continue in the second Indian National Army. If there were any non volunteers they were permitted to stay out.

I was first in charge of the training in G Branch in the second Indian National Army and then later on I became G (I) i.e. head of G Branch. There was the G S Branch, A Branch, Q Branch and Medical Branch and a small establishment branch. The various branches fulfilled the same functions as similar branches in the Indian Army.

I am not aware of any coercive methods used in the raising of the first and second Indian National Army. Capt. Shah Nawaz was present at the discussions with Col. Iwa Kuru. He said that Capt. Shah Nawaz like the rest of us was very suspicious of the Japanese intentions. During a conference with Rash Behari Bose and Col. Iwa Kuru the officers used to ask questions and explain their attitude. Capt. Shah Nawaz demanded in this conference that Netaji Subhas Chandra Bose should be brought from Tokyo to lead the movement. Subhas Chandra Bose arrived in Singapore on the 2nd of July 1943. The Provisional Government of Free India was formed on October 21 1943. Subhas Bose became the head of the State and assumed command of the I.N.A. in August. At Nee Soon barracks he told the officers and other ranks of the I.N.A. that he was assuming command of the I.N.A. He further said that if there were any unwilling personnel in the I.N.A. they were at liberty to withdraw because he said he did not want any unwilling men remaining in an army under his command.

Early in 1944, the Provisional Government moved to Rangoon. By February 1944 the Headquarters of No. 1 Division to which I belonged had arrived also in Rangoon and some other Units of the same Division had also arrived there by that time. Whilst I was still G I of that division in that capacity I came across a document which was sent to us by the Supreme Headquarters of the I.N.A. It was drawn up by the Japanese Military authorities in Burma. It was called Understanding between the Japanese Imperial Army I.N.A. and the B.D.A. The document was in the Headquarters of No. 1 Division at Rangoon then. I saw the document last in March 1944 at Rangoon. The document was not acted upon.

I knew the Azad Hind Dal. It was an organisation to recruit and train persons for the purpose of administering the liberated areas in India. Training was given in Singapore as well as in Rangoon. In March April 1944 I went to

the front and the I N A was fighting in the Imphal theatre. Certain areas had been liberated there, and I learnt from my Divisional Commander that those areas were to be administered by the Provisional Government of Azad Hind, and the Azad Hind Dal was meant for that purpose. When the I N A entered Indian territory, there was a proclamation issued by the Head of the State, Netaji Subhas Chandra Bose, and also by the Japanese officer commanding the forces in Burma. I saw this document before I went to the front line, and in that was a proclamation by both the Head of the State as well as the Japanese commander regarding the administration in liberated areas. In that the commander mentioned that the administration in the liberated areas would be carried out under the head of the State of the Provisional Government of Azad Hind.

I knew Manipur area from personal knowledge. I was still G I of No 1 Division. In April I came away from Manipur area to command a regiment in Mandalay; but in July I was again appointed G-I of No 1 Division, which was still fighting in the Imphal theatre, and then as G-I of that division, I came to see official documents about the administration carried out on the Manipur front. At the time when operations were being carried on in Manipur area, the administration of the liberated areas was being carried out by Major M Z Kiani, Divisional Commander. There were also units of Azad Hind Dal at Moreh, which came under the orders of No 1 Division Commander. In my capacity as G-I, I received reports from Vishnupore area, which was being run by Capt S A Malik, who came under the command of No 1 Division. I was about the administration carried out by him and by units of the I N A in Vishnupore sector. At that time we had from Moreh onwards to the Kohima Division, about 1,500 sq miles.

The Japanese started evacuating Rangoon on April 23, 1945. Netaji Subhas Chandra Bose left Rangoon on April 24, 1945. I remained behind. Just the day before Netaji Subhas Chandra Bose left, he called me and Col Loganadan to his bungalow. Major M Z Kiani was also present there as also a few other officers. He told us that the Japanese were evacuating Rangoon very shortly and he would also be leaving Rangoon too. Due to lack of transport, he could not take many officers or other ranks with him and therefore he wanted only a few senior officers to go with him and the rest of the troops of the I N A in Rangoon will be left behind. He appointed Col Loganadan as G O C Burma Command to be in charge of the I N A troops. He appointed me as Chief of Staff to Gen Loganadan. Subhas Bose told us that he was leaving behind this contingent of the I N A for the sole purpose of looking after the Indian civilians in Rangoon, and he ordered us that the main duty of this force was to take over control till such time as the Allied troops arrived in Rangoon. Then he ordered us to surrender as prisoners-of-war to the allied representatives. As soon as we received his orders, I, being the Chief of Staff, assumed control of looking after and issuing orders regarding our future role. At that juncture the Japanese had withdrawn most of their troops from Rangoon. There were no Burmese troops at all. There was the B D A but the B D A troops were either in hiding or away from Rangoon. The only armed force which was left in Rangoon was about 5,000 to 6,000 troops of the I N A. These 5,000 to 6,000 troops were camped in various localities of Rangoon town — some in the suburbs and some actually inside the town itself. I took over the control of all these I N A army camps and drafted out a plan for patrolling, policing and doing guard duties by this contingent of the I N A in the localities where the Indians were residing.

By the 25th, Rangoon town had been completely evacuated by the Japanese and there was no police or any administration working in Rangoon at that time. There was an acting Prime Minister of the Burmese Government in Rangoon.

then, but the Burmese Government did not have any police force. So I called on the acting Prime Minister and explained to him the work which was being carried out by the I N A. I told him that for the time being our main concern was the welfare of the Indian civilians in Rangoon. I told him that if he wanted us to patrol and look after the peace and security of the whole town and the suburbs we would do so. He agreed and the following day he sent his chief police officer to see me. He and I discussed the various aspects and it was agreed that the small police force which that police officer possessed along with the troops of the I N A. would carry out their night patrolling of Rangoon town as well as maintain sentries at the local points. When the Japanese left they threw the rice godowns as well as various provision godowns open to the public and there was a danger that there would be civil disturbances in Rangoon over these provision stores. So we put our sentries on duty on the godowns and informed the Burmese Government about it. I also attended a meeting of the Burmese Cabinet and explained the work which was being done by the I N A. and also the method in which we were co-operating with the little police force of the Burmans. We worked on this plan and gradually we controlled the whole area of Rangoon and after that there were no disturbances. About the 25th or 26th I learnt that the Central Jail where the British prisoners-of-war were housed had been left open by the Japanese when they had left. I immediately went there and made contact with the senior most British prisoner-of-war officer there. That happened to be Wing Commander L. Hudson of the Royal Australian Air Force. I spoke to him and explained the whole situation. I told him what the I N A. was doing and what the intentions of the I N A. were. I told him that as he was the senior most Officer present there of the Allied forces I placed myself under his command and that I was willing to surrender the I N A. to him. But he told me to continue the work which I was doing. He said that he had about a thousand British and Indian prisoners of war in the jail and they would all stay there inside the jail, but I was to report to him every morning for orders otherwise he did not interfere with the work which was being carried out by the I N A. At the same time round about that date an officer of the B D A. (Burma Defence Army) came to see me. At that time the B D A. was allied with the British forces and was hostile to the Japanese. This B D A. Officer asked me about the intentions of the I N A. contingent in Rangoon. I told him what our intentions were, that we were there to help the then Burmese Government to restore peace and order in Rangoon town and that if and when the British forces arrived I would be ready to hand over to them all the I N A. personnel as prisoners-of-war. This B D A. Officer told me that it was the intention of the B D A. to come and take charge of the Rangoon town. He said that the B D A. Officers were in contact with Allied forces and they were working on a general plan. I took him to Wing Commander Hudson to whom this B D A. Officer explained the plan which the B D A. was following. But Wing Commander Hudson did not believe what this officer was telling him. He asked for a written authority from the British forces under which the B D A. was acting. This B D A. Officer was unable to produce that authority. So Wing Commander Hudson ordered me to continue the work which the I N A. was performing at that time. He told this B D A. Officer that unless and until the B D A. produced a written authority or an order from the Allied Commander he would not accept the B D A. and in the meantime if the B D A. in any way harmed the troops of the I N A., Wing Commander would hold that B D A. officer personally responsible. So we continued our work and we could not say what the intentions of the Allied forces were. The Japanese had evacuated the town for nearly five or six days. We were expecting the Allied forces to come any moment. But in spite of Rangoon being more or less an open town, Allied planes were still coming over, bombing and strafing. I

told Wing-Commander Hudson that by this bombing and strafing the poor civilians were suffering; and he told me that in the circumstances there was no method by which we could communicate with the Allied Commander. I had a small transmitter which I handed over to him and I told him to utilise that and send messages across, but unfortunately Wing-Commander Hudson did not know the wave-lengths on which to send the messages. We had a contingent of the I A N at Mingaladon about 12 miles north of Rangoon.

Witness produced a document (TTTTT) which was issued under my instructions but signed by Col K L Saleem

Capt R M Irshad continued. On or about May 3, I learnt that the Camp Commander at Mingaladon had signalled down a British aeroplane. I directed that officer to take that British Air Force Officer to Wing-Commander Hudson. Consequently, I was informed by Wing-Commander Hudson that on May 4, an all-out offensive was planned against Rangoon by Allied forces, Rangoon town was to be subjected to bombing, strafing and shelling. Wing-Commander Hudson also informed me that he had taken action on this information. He had sent an officer of the I N A down the Rangoon river accompanied by this Air Force Officer who had been signalled down, to the British Fleet waiting outside to tell the Allied Commander that Rangoon was an open town. I now produce a document (marked 5 U) which was sent to me by Wing-Commander Hudson on May 3. I identify his signature. I had official correspondence with him. I also produce a letter (marked 5 U) which I received from Wing-Commander Hudson on May 3. On May 4 I received information that the Allied troops had landed on the Rangoon river. I then reported to the Officer Commanding who had come to Rangoon. He was Brigadier Lauder commanding the 26th Indian Infantry Brigade. I recognize the document (marked 5 W) which I received from Brigadier Lauder personally. It was about the 11th of May 1945. I reported to Brigadier Lauder and explained to him what work the I N A had been doing, and what the strength of the I N A was. I told him that we were ready to surrender as prisoners of war. For the time being he ordered me to collect all arms and equipment and send them to his Headquarters and to confine all ranks of the I N A in their camps. Next day Col. Loganadan and I reported to Brigadier Lauder and there he gave detailed orders. He said that he was not in a position to accept us as prisoners-of-war. We were still and will continue to be the I N A till these troops reached India. He said "All your troops will concentrate in the Central Jail as well as the Insein Hospital," but he pointed out that the jail should not be considered as a jail. He was housing us there because there was no other accommodation available and said that we should consider the jail to be the I N A barracks. He permitted us to put up a board on the gates of the jail which read 'I N A Barracks,' and for the first three or four days we had our own guard at the gate. He told us that inside our barracks there will be restrictions on the I N A. Col Loganadan would still be commander of the I N A in Rangoon and he will administer the camps according to the regulations laid down for the I N A. The only thing he asked us to do was to remove our I N A badges of ranks, and the reason he gave us was that the I N A badges of ranks were not recognized by the Allied forces and if officers of the I N A went out of their barracks wearing the badges of the I N A, they would not be paid due respect by the Allied forces and there may also be a certain amount of trouble. This continued till the 13th when the first contingent of the I N A left for India.

The Allied troops moved in on the 4th of May 1945. The I N A continued to perform the duties on the 4th of May. When I reported to Brigadier Lauder I received his orders regarding collecting arms, etc. I immediately issued orders to our Units and to our various camps and ordered them to collect all arms and stop pat-

rolling This was done. The following day Brig Lauder came to my bungalow and asked me whether his orders had been carried out. I told him that all arms and equipment had been withdrawn and patrolling had been stopped. He ordered me to continue the patrolling in Tongyangyan, a district of Rangoon. This was about 7 to 8 miles outside Rangoon town and was inhabited entirely by Indians. We had about two companies of the I.N.A. there. Brigadier Lauder told me that immediately the patrolling was stopped by the I.N.A., and before the Allied troops could take over two murders had been committed in that locality and he wanted me to order that camp commander to continue the patrolling of that locality till such time as the Allied troops could come and take over. That lasted for the next three days.

Jamadar Mohd Nawaz was in my Unit and when I was Company Commander in that Unit, commanding B Company he was my platoon commander then. Jamadar Mohd Nawaz joined the I.N.A. on Id ul Fitar. The V.C. Os of my Unit, who had not yet volunteered themselves for the I.N.A. called me — I being the officer of the Unit — to their camp in Singapore. I accompanied by Capt. Rodrigues went there and the V.C. Os including Jamadar Mohd Nawaz and about four hundred other ranks, signed their names on the form. At the time of surrender of Singapore, Jamadar Mohd Nawaz was in Kuala Lumpur and later he came down to Singapore — I do not remember the exact month, but I think it was in 1942. I used to see him quite often. At that time I was in the I.N.A. and he used to come to my bungalow to see me. There I learnt that another V.C.O. of our Battalion by name Subedar Ahmed Khan, had been arrested and taken to the Detention Camp for stealing. I went into the case and learnt that Subedar Ahmed Khan had been caught selling rations of his Unit. I investigated this case. He had been taken to the Detention Camp as a punishment. I also knew that as a protest against the arrest of Subedar Ahmed Khan, Jamadar Mohd Nawaz and a few other V.C. Os also went to the Detention Camp and they said that if you want to keep Subedar Ahmed Khan in the Detention Camp we would also like to remain there. I went there and found him in the camp and ultimately I was instrumental in getting them out of the Detention Camp.

Cross-examined by Counsel for Prosecution, Capt. R. M. Irshad said. At Farrar Park I saw some Indian soldiers wear an arm band with the letter F. I did not see any officers wearing these bands. Later I learnt that that stood for Fujiwara Kikan. I did not know what the functions of the Fujiwara Kikan were. I did not know that Mohan Singh had been persuading soldiers to fight against the British long before the fall of Singapore.

I was interviewed by the Defence for the first time about 1½ months ago. I gave my statement to them. I do not think I said in my first statement "From now on you belong to the Japanese Army". To quote Col. Hunt I said "Now you are prisoners of war and I hand you over to the Japanese authorities. These are the words I used as far as I remember in my first statement. Indian prisoners were sent to the South Pacific Islands after the raising of the second I.N.A. This did not happen before that to my knowledge. It could have possibly happened without my knowledge. I do not think that the I.N.A. were being paid by the Japanese because the first pay we got was in September and Mr. Rash Behari Bose assured us that it came from the Indian Independence League. When the I.N.A. dissolved we refused to accept any pay from the Indian Independence League or whatever source it came from. But on that Mr. Rash Behari Bose told us that by accepting that pay we were not putting ourselves into any obligation to anybody because that money was his own money. He gave that to the senior officer in writing and it was circulated. He probably paid it being an Indian for the benefit of the Indians. The alternatives before Indian soldiers were either to join the I.N.A. or be treated as prisoners of war. The treatment by the Japanese of prisoners of war was

unsatisfactory This fact was well known to everybody We had been given to understand prior to our being taken as prisoners of war that the Japanese did not treat their prisoners of war well and on that assumption I felt that prisoners of war would not be treated well by the Japanese Later on when we actually came into contact with them I saw that they were not treating prisoners-of-war according to international rules and regulations They were not inflicting tortures on prisoners of war to my knowledge I did not see any tortures being inflicted by them

I was in Neesoon Camp on February 18 I do not remember whether Fujiwara and Mohan Singh came to Neesoon Camp that day to deliver a lecture urging people to join the I N A. I have no knowledge of Fujiwara and Mohan Singh before the fall of Singapore. My estimate of the numbers at Farrar Park was a rough estimate. It might have been 30,000 I never actually witnessed any incident where the accused officers were recruiting I have no knowledge of it I say Capt Sahgal joined the I N A in August 1942 because in July 1942 we discussed the matter I am aware of the goodwill mission that went to Tokyo in March 1942 Mohan Singh explained what happened there but I was not there He never told me personally I came to know of it I cannot say whether the raising of the I N A was a Japanese idea. I do not know whether there was a meeting in Bidadari in March 1942 I was not present The men followed their officers in joining the I N A in some cases I know that in February those officers who did not join the I N A were separated from their men I do not know what the object of that was

I know that ever since war was declared with Japan, the Congress had declared themselves hostile to Japan. I know this because when war was declared I was on my way to India I arrived in India on December 12, 1941, and I was recalled to Malaya and left India on January 16, 1942 I learnt that the Congress was hostile to the Japanese from newspapers in India I think I read somewhere in some paper that the Congress declared itself hostile to the Japanese Beyond that I cannot give any authority

I was not present at the Bangkok Conference I do not know whether one of the resolutions was that Japan was asked to make an unequivocal declaration as regards India As regards the removal of Capt Mohan Singh, I heard if from Rash Behari Bose when he came to give the order for his removal I know that Fujiwara was succeeded by Iwa Kuru That was in September or October 1942 I am not certain whether it was earlier I do not know that these resolutions were given to Iwa Kuru to forward to Tokyo and he refused to forward them Mr Rash Behari Bose did not tell me that Besides what I have said, Rash Behari Bose did not tell me anything else

Between February and September I was Transport Officer in Capt. Mohan Singh's headquarters That was not part of the I N A I did not live in the same bungalow as Mohan Singh

After September 1942 I was in the I N A Headquarters I do not know whether the Japanese took Indian prisoners away and sent them to the South Pacific after September 1942 To my knowledge it was after the formation of the second Indian National Army That was in January or February 1943.

I have no idea of the number of persons they took away The people who did not join the I. N. A were taken away to other camps in Singapore island the other camps were Seletar Camp, Buller Camp, River Valley Camp and Kranji Camp During the 1st I N A period, these camps were under the control of Capt Mohan Singh After January 1943, when the second I N A was raised, all these camps were taken over by the Japanese authorities There was no Concentration Camp, there was a Detention Camp under the command of Capt. Mohan Singh The first time I went there was on a visit, and the second time

I went to see some of my officers of my own Unit who were there. They were non-volunteers.

I know that when the raising of the second I N A. was being considered, a questionnaire was circulated to officers by Rash Behari Bose. I do not know whether after receiving the answers Rash Behari Bose interviewed officers who had said then they did not want to join.

Shown the original of Ex. E, E, witness said I remember having seen it. I think it was given indiscriminately to all.

Shown Ex. 5 A, witness said I do not remember having seen this pamphlet. I do not know definitely what happened to Capt. Mohan Singh after he was arrested. He was taken away under the orders of Rash Behari Bose. The order was read out to us by Rash Behari Bose. It said, as far as I remember that he was removing Capt. Mohan Singh from his appointment as G O C of the I.N.A. That was all it said and that is what I am referring to when I referred to the order for his arrest. He was removed. I do not know what happened later to Capt. Mohan Singh. I do not know when he was taken away from Singapore. I heard that he was taken away.

After the dissolution of the 1st I N A the Japanese refused to take us back as prisoners of war because they said that we had not committed any offence against the State. That was told to us by Col. Iwa Kuru. This occurred at a meeting of the senior officers where all the three accused were present. Capt. Kiani was also present there; as also other officers. I was puzzled at that time as to what the Japanese meant by saying that they would not take us back. We often discussed amongst ourselves but we could not come to a conclusion as to what it meant.

I said in my evidence in chief that it was decided that recruiting for the second I N A should be entirely voluntary. The recruitment for the 1st I.N.A. also was voluntary. We wanted to tell everybody that it was a purely voluntary service and nobody should ask anybody or force anybody to join the I.N.A. That is why all the Unit Commanders were asked to personally approach each individual in their Units and ask him whether he wanted to join the I N A or not. We wanted to ensure that everybody who joined the I N A. would join it voluntarily.

I do not know in what part of Rangoon the training for the Azad Hind Dal was given. Regarding the proclamation when the I.N.A. passed into Indian territory, I saw it in Rangoon in March 1944. I saw a copy of it in my headquarters. We arrived at Manipur about the beginning of April 1944. Manipur is a State. I know in which part of Manipur the I.N.A. were. The I.N.A. were operating on the main Trinu Imphal Road. One regiment was on the left of the road about 5 to 6 miles on the Burma side of Palel, and the other regiment was on the right side of the road. When I was there the operations against Palel were being carried out. Palel was never taken. I do not know whether it was attacked on the May 2, I was not there. From that stage, the I N A began to withdraw.

Reports of administration were about the administration carried out in the areas in which the I.N.A. and the Japanese were operating. They were reports from the various Unit Commanders on the front line to the Divisional Headquarters of the I.N.A. forces there, and also instructions from the Divisional Commanders to the Unit Commanders. There were various reports regarding the administration of that area. I also saw instructions which were issued to the Unit of the Azad Hind Dal, which was under the command of the Divisional Commander there. His name was Major M Z. Kiani. I remember one instance where No 2 regiment commanded by Capt. I J Kiani operating on the left of the road had to settle some land dispute amongst the Manipurians in that particular area. This was settled by Capt. I J Kiani himself. I also remember the instructions given to the Azad Hind

Dal Unit for collection of supplies, giving medical aid, etc., to the villagers. Those are the only few particular instances that I remember. It would be wrong to say that the Azad Hind Dal never went to Maymyo because they went right up to Moreh and certain units to Chimol. Kohima was besieged by the Japanese and also units of the I N A. In the month of June there was No 1 Guerilla Regiment of the I N A at Kohima. That is all. I do not know the date when Imphal was relieved. At the time when Palel was besieged there were British troops in the operational areas of Manipur. The areas which had been liberated from Moreh to Chimol were administered by the I N A. There were certain areas where operations had not actually been carried out; there were certain areas where operations had been or were being carried out and there were certain areas where operations had ceased, in other words, where the Japanese and the I N A were in military occupation. That is what is meant by "liberated areas."

I received reports from Vishnupore side from Capt Malik. They were very few,—about four or five reports. The last report was received in the beginning of July. I saw all these reports together. That was when I was going back to the front line but by that time the withdrawal had started. I was at Kalewa assisting in the withdrawal of our troops and it was there that I was handed over these files to go through. All the reports contained passages about administration. The Palel and Vishnupore areas were the two areas about which I saw reports. I saw four or five reports regarding Vishnupore area, while from No 1 Div area (that was on the Palel side) I came across other reports. I cannot remember how many but there were a few. The forces fighting in Vishnupore area were not part of No 1 Division but they were fighting under the command of No 1 Division, and this report which you showed me would not necessarily include the Vishnupore forces. There was, as I have said before, military administration in those particular parts of Manipur and Vishnupore area where the I N A. were operating. At the time when Mr Subhas Chandra Bose left Rangoon on the 24th of April 1945, there were about five or six thousand troops of the I N A in Rangoon. Fifty to 95 per cent of them were armed. We did not have arms for all of them.

On the 1st of May the Burmese Army issued a Proclamation that they had occupied Rangoon at 6 a m on that day. It was only their intention. The Proclamation was made, but it was not carried out. The Proclamation said that they had entered Rangoon at 6 a m on that day.

Witness was shown Ex XXXXX, UUUUU, VVVVV, YYYYY and WWWW

The last paragraph, No 3, in 5W has not been struck out by me. This report was taken over from me by the C S D I C and since then it has not been in my hands. The personnel referred to in Para 3 is the I N A personnel. All that I did in Rangoon was done under instructions of Col Loganadan. Subedar Major Paimda Khan belongs to the 52nd Punjab Regiment. He did not join the Indian National Army. Subedar Ahmed Khan and other officers sent for me to the Buller Camp. I was at headquarters staying there. One of the officers came and told me—I do not remember who he was or what his name is, but he came over and asked me to visit Buller Camp. I think this was in October-November 1942 to be more precise it was on Id-ul-Fitar. When I went there most of the V G O s, including Ahmed Khan and Ahmed Nawaz, told me that they wanted to become members of the I N A. I got their signatures on the form. About 300 or 400 personnel joined, and I submitted those lists to I N A Headquarters.

Subedar Ahmed Khan had been visiting me before that and he had been asking me questions about the I N A. I explained to him what my attitude was and why I had joined the I N A. I took their signatures myself along with Capt Rodrigues. These people did not join the second I N A. The lists which I gave to the headquarters were all destroyed at the dissolution of the 1st I N A and they

never asked me again to come and take their signatures, and I did not press them. In fact they did not belong to the I.N.A. after December 1942.

One of Ahmed Khan's officers came and told me that he had been taken to the Detention Camp for stealing and selling rations. I do not know under whose orders he was taken there. Disciplinary cases were dealt with by A Branch and the I.N.A. Headquarters. I do not particularly remember who dealt with this case. When I heard that he had been taken to the Detention Camp, because he was once upon a time one of my own officers, I went into the case and inquired as to how he had been taken there and why he had been taken there, then I requested Capt. Mohan Singh to release the officers from the Detention Camp and he very kindly agreed to my proposals. I mean Ahmed Khan and his other brother officers who followed him into the Detention Camp. The other officers went there willingly because Ahmed Khan had been taken there on a charge of theft. I found them in the camp. It is extraordinary that they would be admitted simply because they said they wanted to go there. If they wanted to go to jail, it was up to them. The man who admitted them would not necessarily get into trouble. If someone came to him and said that he wanted to be admitted because his brother was there, he would let him in. I came to know about this three or four days after their being admitted. Very shortly after that they were let off together. I asked them why they were there and they said. Our senior officer Ahmed Khan, was taken and we did not believe in his guilt and that is why we are here as a protest. I heard from the A Branch that an inquiry had been made and nothing more. I did not go into the details of the inquiry. I do not know why they tried him and found him guilty. I requested Capt. Mohan Singh to let him off when they were inside the Detention Camp. It did not concern me whether the charge was false or true — I wanted Ahmed Khan to come out from the Detention Camp, and I requested Capt. Mohan Singh to let them out.

Re-examined by Counsel for Defence, witness said. It is not correct that the Burma Army took charge of Rangoon on the 1st May 1945. I knew that there were about ten or fifteen non-volunteer officers there in the Detention Camp. I knew that these officers had been put in there because they had been doing propaganda against the I.N.A.

At this stage the case for defence was closed.

(The Court reassembled on Dec. 1) when Mr Desai began his defence address.

DEFENCE ADDRESS

BY

MR. BHULABHAI J DESAI

During the last many days you have heard evidence on the two charges with which my clients, the accused before you, have been arraigned. Shortly stated, the two charges are waging war against the King and, without detailing anything, murder and abetment of murder in that certain deserters were tried and ordered to be shot. My submission to the Court is that substantially there is really one charge before the Court, because in so far as the charge of murder is concerned it is a part of the first charge; and I say so for this reason that it would be quite possible, in the case of a charge of waging war against the King to be able to charge every single act of firing a shot, which would be, I think, *reduco ad absurdum*, and therefore it will be my duty later on to point out to the Court that really and truly there is only one charge before the Court and that is waging war against the King. Evidence has been admitted on other matters to which I do not wish at this stage to refer so that for the moment, I will occupy the time of the Court for the purpose of considering what facts have been established in support of the first charge, namely, waging war against the King and in due course it will also be my duty to point out to the Court that in so far as the second charge is concerned there is no foundation in fact for it except to this extent that in reference to the four persons who are

Mr Bhulabhai Desai, who led the defence



Sir Naushirwan Engineer, Prosecution Counsel



alleged to have been shot there is on record evidence that they were tried and sentence passed. In reference to Mohammed Hussain, there is nothing on record to show that any sentence was passed. In all these cases it will be my duty to submit that on the evidence the Court is bound to come to the conclusion that though sentence was passed in one case and not at all passed in the other, none of these sentences was actually carried out. That is the nature of the examination on facts which will be necessary for me to place before this Honourable Court.

There are one or two matters which I am bound to mention to the Court before I come to the actual facts of the case. This case raises issues which are not of the normal type which a Court Martial is called upon to decide, because most, if not all, of such cases are generally cases of individual dereliction of duty or individual offences. Here is a case in which, I venture to say—and the evidence supports it—that it is not at all a case of what you might call three individuals waging war against the King. The evidence amply bears out the fact that these men charged before you were a part of an organised army which waged war against the King even according to the Prosecution. Therefore the case before the Court is not a personal case of any kind or sort. The honour and the law of the Indian National Army are on trial before this Court. What is now on trial before the Court is the right to wage war with immunity on the part of a subject race for their liberation. I shall be able to cite authorities on International Law that a nation or part of a nation does reach a stage where it is entitled to wage war for its liberation, and I shall be able to prove that point to your Honours' satisfaction.

There is another thing I wish to say, and I say it with a certain degree of earnestness. This case has naturally aroused a considerable amount of public interest. It is not for me to say whether it is right or not but the fact remains that it is so, and opinions have been expressed from the point of view of the public and from the point of view of what I might call 'official sources' beginning with the Viceroy of India. You, Sirs, having sworn to do justice to these men on the evidence before you will, I have not the smallest doubt, come to your own decision guided by your conscience and entirely unaffected by opinions for or against them. For in all trials of this kind—and in a few of them I have had the honour to be engaged—it is very difficult for the human mind to maintain that detachment which justice requires. In the case of Juries I have had to caution them against the use or abuse of the effect of public expressions of opinions on matters which it is for them to decide. In this case what I wish to say is this. Having studied the rules which guide the proceedings before this Court I find that you, Sirs, are the judges both of law and of fact. I am aware that the Judge-Advocate who is your adviser, will take care to do justice to everything that myself or my learned friend on the other side will place before you on questions of law and fact, and while you will very seriously regard his advice in the end, the final decision is your privilege and your responsibility. Therefore what I might have done in another place I do not do before you and that is, I cannot say that I will address the Judge on law and the Jury on the facts. There it is an easier process because I must confess that before a trained Judge it is easier to deal with the question of law than before a tribunal of this character. At the same time I have this consolation that sometimes if the law is plain—as I submit it is in this case, it will probably be much easier, appealing to commonsense, to establish the law on which I rely, and I desire to ask your indulgence and your attention in the somewhat difficult task which I am undertaking.

My next submission to the Court is that I desire, as far as possible, to state categorically the conclusions of fact which are established in this case. Having done that I will proceed to deal with the law applicable to them. In dealing with any single item, should any doubt arise in the Court's mind, I trust that

you will be pleased to tell me, so that, if it is necessary, I will go into the details of evidence, because as at present advised I do not desire, unless there is a real doubt about it, to weary you with reading over 250 pages of evidence and about 150 pages of exhibits, which are before the Court. A few important ones I will certainly read where necessary. Having regard to the attention which the Court has paid to the evidence as it was recorded I will avoid reading them in extenso.

With these remarks I now proceed to place before the Court what I submit are the conclusions of fact justified by evidence. Before I do that, I will give you a few important events. In the month of December 1941 war was declared by Japan against Britain and America. Then followed certain events which are the subject matter of controversy to a certain extent before this Court. The next event of importance is the surrender of the British Indian forces at Singapore, which took place on the 15th February, and then the most important material event took place on the 17th February at Farrar Park.

The next event of importance, after that which the Court will have to bear in mind, is the formation of what I shall shortly describe as the first Indian National Army in the month of September 1942. The next event of importance is the dissolution of that Army in the month of December 1942 and the arrest of Capt. Mohan Singh. The next important events thereafter are the efforts which were being made for the formation of the second Indian National Army. On 2nd July 1943 Sri Subhas Chandra Bose arrived in Singapore. He later took command of the Indian National Army and there was a conference of what is called Greater East Asia, attended by Indians, with delegates belonging to the Indian Independence League from different parts of the Far Eastern countries. One of the resolutions at that Conference was that a Provisional Government of Free India should be established. The next event of importance is that on the 21st October 1943 there was proclaimed a Provisional Government of Free India which for brevity I will call Provisional Government. That Proclamation is one to which I shall refer later, but now I will try to give the Court events of importance which the Court will have to bear in mind. On the Proclamation of that Government the different Ministers concerned with the functions of the State took Oath of Allegiance, of course headed by Netaji Subhas Chandra Bose as the Head of the State. The next event of importance is the Declaration of War by that Government on Britain and America. The next event of importance thereafter is that so far as the I.N.A. was concerned it began to carry out its functions under the orders of the new State. Thereafter the events of importance so far as the actual facts are concerned, are only three: the movement of this Government from Singapore to Rangoon, the movement of the Indian National Army from Burma into beyond and within the territories of India right up to Kohima, and the rest dealing with the retreat of that Army back again until the event which took place at Rangoon slightly before, at the time, and slightly after the occupation of Burma by the British Forces. These, Sirs, are the main undisputed events with which the Court is concerned. Bearing in mind these events, I shall now place before the Court the conclusions of facts which we submit have been established either in cross-examination of the evidence of the prosecution or in the affirmative evidence which we have called in defence.

The first conclusion of fact which we ask this Court to accept is that the Provisional Government of Free India was formally established and proclaimed. I submit, Sirs, there can be no doubt about this event and no cross-examination of witnesses who have been called to prove that event, as far as I can see has been seriously attempted. You have to remember Sirs the picture of the Proclamation of that

Government and Exhibits put in on that point. Before I proceed any further, I wish to call attention to that proclamation. It is Exhibit FFFF before this Court. I do not wish to read the whole of that document, the only passages which I wish to read are passages which bear on the issue before this Court.

Reads the following from the document

"Forcibly disarmed by the British after 1857 and subjected to terror and brutality, the Indian people lay prostrate for a while—but with the birth of the Indian National Congress in 1885 till the end of the last World War, the Indian people, in their endeavour to recover their lost liberty tried all possible methods—namely, agitation and propaganda, boycott of British goods, terrorism and sabotage—and finally, armed revolution. But all these efforts failed for a time. Ultimately in 1920, when the Indian people haunted by a sense of failure, were groping for new methods, Mahatma Gandhi came forward with the new weapon of non-cooperation and civil-disobedience.

"Thus, on the eve of the present World War, the stage was set for the final struggle for India's liberation. During the course of this war, Germany, with the help of her allies, has dealt shattering blows to our enemy in Europe—while Nippon, with the help of her allies has inflicted a knockout blow to our enemy in East Asia. Favoured by a most happy combination of circumstances, the Indian people today have a wonderful opportunity for achieving their national emancipation.

"For the first time in recent history, Indians abroad have also been politically roused and united in one organization. They are not only thinking and feeling in tune with their countrymen at home, but are also marching in step with them along the path to freedom. In East Asia in particular, over two million Indians are now organized as one solid phalanx, inspired by the slogan of "Total Mobilisation."

I stop here to submit to the Court that evidence have been adduced as to the numbers of Indians in East Asia and the figure mentioned here is more or less what is borne out before this Court.

"Having goaded Indians to desperation by its hypocrisy, and having driven them to starvation and death by plunder and loot, British rule in India has forfeited the good-will of the Indian people altogether, and is now living a precarious existence.

"It will be the task of the Provisional Government to launch and to conduct the struggle that will bring about the expulsion of the British and of her allies from the soil of India. It will then be the task of the Provisional Government to bring about the establishment of a permanent National Government of Azad Hind constituted in accordance with the will of the Indian people and enjoying their confidence. After the British and their allies are overthrown, and until a permanent National Government of Azad Hind is set up in Indian soil, the Provisional Government will administer the affairs of the country in trust for the Indian people.

"The Provisional Government is entitled to and hereby claims, the allegiance of every Indian. It guarantees religious liberty, as well as equal rights and equal opportunities to all its citizens. It declares its firm resolve to pursue the happiness and prosperity of the whole nation and of all its parts, cherishing all the children of the nation equally and transcending all the differences cunningly fostered by an alien government in the past.

"In the name of God, in the name of bygone generations who have welded the Indian people into one nation, and in the name of the dead heroes who have bequeathed to us a tradition of heroism and self-sacrifice, we call upon the Indian people to rally round our banner, and to strike for India's freedom."

Then follows the signature of the members of the Government. The reason why I called attention to this document is the purpose for which the

Provisional Government was formed, and the means by which that Provisional Government intended to carry out its purpose. The fact that it failed to achieve its purpose is entirely irrelevant to the issue before this Court. That is the first fact which we say has been established. The second fact which we say has been established is that it was an organized Government. It does not require many words to establish that proposition. Witnesses have spoken before the Court as to the allocation of duties which appear at the end of the document which I have just read to the Court and it is also in evidence before the Court that the Indian Independence League became the executive of the Provisional Government which organized so far as it was possible to do in those warlike conditions the care of the people who owed allegiance to it. In the month of June 1944, as the evidence is quite clear—it is also in the Exhibit—in Malaya alone, 2,30,000 persons actually took written Oaths of Allegiance to the Government. That was in June 1944 and it is in evidence that thereafter the process continued. The object of stating the figure is that it was not a case of a Government of what you may call or what somebody being my opponent may facetiously call, a set of rebels, a desultory sort of crowd of no consequence. I wish to give a lie to that kind of suggestion, and that is the reason why I suggest that the Provisional Government was an organized Government to whom the whole of the two million odd people owed allegiance, and out of whom 2,30,000 persons actually took the Oath of Allegiance in Malaya.

Then Sir the next fact which I submit is established before the Court is that this Government was recognized by the Axis powers. I use that expression briefly because it is quite unnecessary either in law or in fact to prove that the recognition must be by a particular number of Governments or by a particular class of Governments. The recognition is proof and more than proof that it had the right to declare war for the purpose for which it intended to fight and having the right to declare war in so far as its armies were concerned they became subject to the international laws of war.

On the question of recognition I wish to call attention to certain cross-examination by my learned friend. Of course in so far as recognition by Germany or Italy was concerned there could be no cross-examination and none was attempted. But with reference to certain East Asia matters in those days, a suggestion was made that those Governments were under the control of Japan. I for my part, with very great respect, fail to understand the significance of the suggestion. Supposing Japan had an Empire, that is to say succeeded in keeping the territories it conquered without giving them liberty the recognition would be nonetheless effective because it makes no difference whether and which Government recognised this particular Government of Free India. The point still remains and I assert that the recognition is but a proof of what I may call a statehood which gives it the capacity of declaring and making war for the liberation of its own countrymen. The material point therefore is whether it had attained that degree of statehood which gave it that power. Once you have a State which can and is entitled to declare war the war itself is its own justification. There is no question that any two independent States have a right to declare war. Any act done in the prosecution of that war is justified by the mere fact of the war itself. Barring this it may be asked why trials are going on in parts of Asia and elsewhere, and in Germany. In fact they themselves emphasize the truth of the correctness of the proposition that any act done in due prosecution of war cannot be the subject of any municipal court by way of examination. What has happened is that in addition to the due prosecution of war according to civilised laws individuals have been guilty of acts outside the pale of civilized warfare which we popularly call now war crimes. But the very fact that you can only deal with and do deal with war crimes emphatically and clearly proves that in so far as the normal

civilised conduct of war is concerned including the use of an atomic bomb, is outside the pale of examination by way of right or wrong by any municipal tribunal

Then, Sirs, the next fact which I submit is established is that this State had an army which was properly organised, having its own distinctive badges and emblems, functioning under regularly appointed officers. I am obliged to the prosecution in this matter for I was spared the necessity of having to prove this proposition. They put in document after document to show that the Indian National Army was properly organised. First, that it was regulated by an Indian National Army Act. The only point as far as I could see from the cross-examination which was made was with reference to certain items of corporal punishment. On that it is necessary to point out to the Court that for the moment those who pursue that course forget the course of legislation in British India itself. It is true that Lieut. Nag told the Court that apart from the Indian Army Act certain provisions relating to corporal punishment were incorporated in the Indian National Army Act. It was probably forgotten that a little while before, in the Indian Army Act were incorporated provisions in Section 45 of that Act, headed "Corporal Punishment". I am reading from Section 45 of the Indian Army Act of 1911

"Where any person subject to this Act, and under the rank of warrant officer—

- (a) on active service, is guilty of any offence, or (b) at any time is guilty of the offence specified in clause (d) of section 31 or (c) at any time is guilty of a civil offence which would be punishable with whipping under the law of British India, and is triable by court-martial under this Act,

it shall be lawful for a court-martial to award for that offence corporal punishment not exceeding thirty lashes."

It is true that about the time of this war this particular provision was omitted. But it is a mistake to think that a similar provision in the Indian Statute Law did not exist. As a matter of fact, in so far as the Defence of India Act and certain Ordinances are concerned, the provision was definitely made, making corporal punishment as part of the punishment applicable to the personnel of the Indian Army. Ordinance 37 of 1943 practically replaced the provisions of the Indian Army Act which were not found in it, a certain amount of effort was made as if under an Act governing a civilised army corporal punishment was not permissible as against the provisions which were to be found in the Indian National Army Act. I am quite certain that it was done under misapprehension.

The Military Operation Areas Special Powers Ordinance, Part II, Sections 22 and 23 read

"Sec 22 Whoever commits an offence punishable under Section 121-A, 122, 125 or 131 of the Indian Penal Code (XLV of 1860) may, in lieu of any punishment to which he is liable under the said code, be punished with death

"Sec 23 Whoever contravenes any of the provisions of Rule 36 of the Defence of India Rules or is deemed under the provisions of the said Rules, to have contravened such provision, may, in lieu of any punishment to which he is liable under the said Rules, be punished with death, or with whipping, in addition to any punishment to which he is liable under the said Rules. I will be able if necessary to read out all the Rules which clearly show that under the Indian Law, taken as a whole, the punishment with reference to whipping exists, such as the provision which was made in the Indian Army Act. I have got, Sirs, a summary made out of the provision with reference, to *whipping which I shall afterwards hand over to the Court*. Shortly stated, my submission to the Court is this that the only attack made by the Advocate-General on the making and

framing of the Indian National Army Act, was the provision with reference to whipping and I submit to the Court that that was done under a misapprehension, for it is as much a part, though not technically quite, in the Indian Army Act but in the Defence of India Rules and the Ordinance. It makes no difference. But taking in the aggregate, Indian legislation does sanction corporal punishment throughout the period with which we are concerned and therefore it is that I say and submit to the Court that this was a properly organised army, having a code of its own, which for all practical purposes is the Indian Army Act and any condemnation of the rules under which that army functioned is a condemnation of the Indian Army Act itself which I submit is not the purpose of the prosecution in this case. Therefore, we come back, Sirs, to this point that this was an organized army functioning under a civilised code. As regards the appointment of officers and the regular method by which it was done, as regards the different branches and the functions you, Sirs, are more competent than myself to judge from the documents which have been placed before you. They are in the shape of army orders or orders of the day and so on which have been placed before the Court. On a question of fact we have arrived so far that there was a state which declared war for the purpose of fighting for the liberation of the country and it had an organised army organised under a code which for all practical substantial purposes, accorded with the aggregate law on the same subject prevailing in British India. I use the word aggregate, because I must bring in the other laws also which provided for and permitted the infliction of corporal punishment in all these cases. The next fact which is established beyond all dispute was that the object of the declaration of war by the Provisional Government of Free India was the liberation of India.

The next important fact which I think must be mentioned is that the Indian National Army was formed with two purposes. The main purpose was the securing the liberation of India and no doubt Sirs from the most important witness that the prosecution called it has never been difficult to establish that that was the object with which that Army was formed and that was the object with which the individuals who joined it. The other object also was which was somewhat subordinate, but useful purpose, the protection such as could be afforded to the Indian inhabitants of Burma and Malaya particularly during the days when law and order in those parts of the country was poorly looked after the lives and the honour and the property of the people was not quite so easily protected. The first object is the one which the army was called upon to fulfil as a part of its duties. Again taking the evidence as a whole, I submit it has been amply proved before this Court that the I.N.A. was formed with the object of fighting for the liberation of India and also with the object of protecting the lives, honour and property of people residing in East Asia at that time.

The next point which is established I submit, is this—though I speak with less confidence because I do not see it admitted—but the fact has been proved and it is my duty to examine the evidence on it, is that the Japanese Government or the Nippon Government as it is called, ceded to the new Indian State the islands of Nicobar and Andamans, that the Indian State acquired territory in the form of Ziawadi, which was about fifty square miles in area, and that it administered for a period of four to six months the Manipur and Vishnupur areas.

As regards the first in so far as Lieut. Nag was concerned he has given definite evidence that the two islands were ceded. The evidence falls under three parts the first is a declaration to that effect by the Japanese Government announced by a document which has been proved before this Court. That document is a statement by General Tojo that they were about to concede the islands of Andamans and Nicobar to the Free Indian Government. That document is UUUU (Counsel reads relevant portions of the document) This was on the 5th November 1943

DOCUMENT EX. UUUU

Statement by Prime Minister General Hideki Tojo regarding
the Independence of India.

(Delivered before the Assembly of Greater East Asiatic
Nations, November 6, 1943).

"Not only India but all Greater East Asia was, without doubt, highly invigorated by the speech just given by His Excellency the Head of the Provisional Government of Azad Hind, in which His Excellency made it clear that the Indian people under the Provisional Government, with the future destiny of India and of Asia at heart, have risen resolutely to realise their long-cherished aspiration to regain India's freedom, independence and prosperity

As has been reiterated in the various statements already issued, the Empire of Japan means to give India every possible aid so that she may free herself from the American and British yoke and attain her long-cherished ambition. Now that the foundation of the Provisional Government of Azad Hind has been solidified still further and the Indian patriots under the same Government, bound in close units as never before are firmly determined to accomplish their steadfast aim, I take this occasion to declare that the Imperial Government of Japan is ready shortly to place the Andaman and Nicobar Islands, Indian territory now under the occupation of the Imperial Japanese Forces, under the jurisdiction of the Provisional Government of Azad Hind, as the initial evidence of her readiness to help in India's struggle for independence

The lofty ideal that guided Japan's national founding of enabling all peoples to have each its proper status and to enjoy well-being has been and is being steadily carried out. The Japanese Empire today has been strengthened further in its determination to extend all-out co-operation to India in her fight for freedom. Japan is anxious that the Indians on their part shall extend redoubled efforts in that direction

From the spirited utterances by Their Excellencies the representatives of various countries of East Asia at yesterday's and today's sessions of this Assembly, I note with assurance and satisfaction that these countries, in concert with Japan, are extending every support to the cause of India's independence. I trust and hope that they will give even greater support to that cause in the future."

Then followed events which clearly showed that that purpose was carried out. You have in evidence that that declaration was made and that the new Indian State was called upon to administer it by means of a Commissioner, that a Commissioner was in fact appointed, that the Commissioner in fact went, and you have evidence of a definite ceremony at which the naval and military authorities then in charge handed over the islands to the Commissioner on behalf of the Indian State at Port Blair. These are points on which, as far as I am able to see the evidence, very little criticism has been made by way of cross-examination

The point on which there has been a difference between the Prosecution and ourselves is the actual form and extent of the administration of the islands. But it is clearly a misconception to confuse the ceding of a territory and taking over every item of administration of that territory, particularly under the conditions then prevailing. The fact is—and it is commonsense I submit—that a house might well be sold and completely sold, sold outright and yet possession for a time may not be wholly given. It is a familiar illustration I am giving, so that it is easy to appreciate. In the somewhat elaborate cross-examination for this purpose of Col Loganadan, it was intended merely to point out that the whole of the administration was not taken over—which is not denied—he said it over and over again, and I think

it is established and I ask the Court to hold it is established that he went for the purpose of taking over the administration. It is true that he did not take over more than two items—one, education and the fact that the area was small and the people ignorant is hardly an argument that he had not taken over the administration. I daresay in other countries where the standard of literacy is something like 99 per cent, there are many more schools than in this unfortunate country where the standard of literacy is probably 15 per cent. Therefore the argument that schools were few and the expenditure was so little—I think there is very little point in the cross-examination on this matter. I did enter a protest but it was overruled and it is not for me to say anything more about it. But you do not detract from the cession of a territory in quantity or time by pointing out that the whole of the administration was not and could not be taken over. Colonel Loganadan told the Court again and again—almost painfully over again—of the fact that until he got complete control of the police in the matter of spies (which seemed to be a sore point with the local inhabitants) he was not prepared to take over any other part of the administration. But there is one significant thing that my learned friend got out of Colonel Loganadan and that is that one of the officers who went with him, administered what you may call very elementary justice which it was possible to do in the conditions then prevailing in the islands. So much so that having asked it and got it, he tried to shake it off but he could not and it was proved to the hilt that Justice and Education were taken over. True police was not taken over because the Japanese from the point of view of defence were keen on retaining control over what you may call the spy population of these islands. But one thing remains and that is the most significant fact and that is the renaming of the islands. So that any amount of examination as to why or how month by month or day by day further acts of administration were not made, cannot possibly get rid of three important facts: first, the clear solemn declaration that the islands would be handed shortly. A suggestion was made—it remained at a suggestion only—that they would be handed over after the war. Where my friend got the words 'after the war' I do not know. I hope he will point it out and that is why I read out this document. The document clearly shows that they were to be very shortly handed over.

The second fact was that it was to be administered through a Commissioner which was a definite proposition made at that time. A Commissioner was in fact nominated by the Provisional Government and the Commissioner in fact reached there and began to function. No doubt as in every case of this kind, I presume this Court will take almost judicial notice of the fact as to how Germany and other countries are being administered today. No doubt the man will be qualified and he may be the best educated man from amongst his staff and he may hope that the local machinery would soon adapt itself for the purpose of continuing the administration because it is unthinkable that you can transfer quickly and at one stroke the whole administrative machinery from one country to another. Anybody who is familiar with the administration of this very country, is aware that Britain administers this country through practically the entire machinery of the Indian people themselves. So that the number of men and all the rest of it I submit is so much, without any disrespect, hot air. The real point is, were or were not the islands ceded? And I say there is so much evidence that they were.

The last point is the renaming of the islands. *Shahid and Swaraj*.

I submit that it is clearly established on the evidence before this Court that though by reason of the exigencies of the situation it may not have been possible to take over the complete administration in law and in fact the islands were given over to the Indian State or to what I would call the Provisional Government.

Next I deal with the question of Zinwadi. The position is this accordance to the evidence on the record that this was a property, about 50 sq miles in area,

with 15,000 inhabitants who were Indians. It had on it a sugar factory and various other means of production, agricultural or otherwise and every branch of administration of that territory was carried out by men appointed by the Indian National Army and belonging to the Azad Hind Dal.

My learned friend did not even venture, in the course of cross-examination, to challenge the truth of the statements made before this Court by witness Shiv Singh and Arshad on this head. Shiv Singh said that every branch of administration was taken over. He gave the name of the person who was the officer in charge of every branch of administration, Revenue, Police, P W D, Justice, both civil and criminal. Under these circumstances, the legal position is simple. I shall come to it in greater detail afterwards. Japan conquered Burma. By right of conquest it was in a position to dispose as it liked of the whole or any portion of any territory and as the witness told you clearly, by reason of the agreement between the Provisional Government and the Nippon Government, this territory was handed over as a part of the liberated territory to the I.N.A. and the Azad Hind Dal. At this stage let me point out to the Court that the Azad Hind Dal, it has been proved, was an organisation of men trained for the purpose of administering areas as soon as they came under the control or occupation of the I.N.A. or as soon as they were handed over to them. I must also remind the Court that it has been proved beyond question—because as far as I see there was no cross-examination or effective cross-examination any way, that as soon as the I.N.A. crossed the borders of Burma into India a proclamation was issued in two parts, one signed by the Head of the Indian State and the other signed by General Kawabe under the orders of the South Eastern Command. In that it was distinctly stated that any part of the Indian territory which would be acquired by conquest or otherwise by the Japanese Army would be handed over to the I.N.A. for the purpose of forming part of the liberated territory and to be administered by them. That is the history of the ceding.

Then we come to Manipur and Vishnupur areas. Evidence has been given before the Court without any reasonable demur to the effect that during the time, the Japanese and the I.N.A. were operating, those portions of India were in fact administered by the I.N.A. through its organisation, the Azad Hind Dal, and the area was 150,000 square miles. The duration of administration has no bearing on this issue, for indeed it can happen, as it did happen in this war, that territories were as easily acquired as lost. This Court is not concerned with the question of duration. I would ask the Court to hold that the two islands, Andamans and Nicobar, were in fact ceded, that Ziawadi became a part of liberated Indian territory, and that, though for a short period of time, Manipur and Vishnupur areas were exactly in the same position.

The next point to which I wish to refer is the resources of the State. In order to judge the existence of the State the resources of the State is also one of the matters to be considered. It has been proved before the Court that some 20 crores of rupees were in fact donated to the State, out of which was maintained the civil government and the army. Dina Nath, who impressed this Court, gave extremely clear evidence on this head. He was one of the Directors of the Azad-Hind Bank and he told the Court that between Burma and Malaya, during that short period of time, the State had resources to the tune of 20 crores of rupees, in addition to the produce of Ziawadi. It is a remarkable thing to notice that on the reoccupation of Burma and Malaya every single document which was in the possession of this Indian State was found intact. It was amazing. See the monthly reports which the Prosecution was able to produce with reference to the administration of the Andamans and Nicobars. It only emphasizes—and I wish to make a point of this—that

there was a complete organization, and that organisation was as good as could reasonably be expected. That alone accounts for half the documents which my learned friend was able to produce.

The point is that we were a little handicapped owing to the lack of certain documents. As the evidence before the Court shows, this Bank was closed after the occupation of Rangoon and in fact it is in evidence that some 35 lakhs worth of property was sequestered. I am not complaining of the sequestration. That I think was the right of the conquerors. What I am saying is that in so far as the resources of the State were concerned, they were full and adequate for the purposes which the new State had then in view.

Here I wish to refer to a bulletin. It is not what I might call technical evidence before the Court but it may be my duty to submit that it is a document of which the Court should take judicial notice. The document is dated the 10th November 1945 and called Stamp Collecting.

Mr N P Engineer. My learned friend is reading from a document which has not been accepted.

Mr Desai. I am only making a submission to the Court. Is it my friend's contention that if I read a book on law, it should be put in as an exhibit?

Judge-Advocate. The document itself cannot be admitted at this stage.

Mr Desai. All I am doing now is to make a submission to the Court.

Section 57 says—

'The Court shall take judicial notice of the following facts—

'In all these cases and also in all matters of published history literature science or art the Court may resort for help to appropriate books or documents of reference.

And if the learned Advocate General solemnly suggests that every single book of history literature, science, and art is to be an exhibit before it can be referred to I am very sorry that it is a statement which defeats itself.

Judge-Advocate. Mr Desai will you read out what you want the Court to take judicial notice of?

Mr Desai. May I not apply that the Court may consider it? And I am asking is that this application be considered. Of course the Court may reject it. I am not suggesting that the Court is bound to accept it. My submission is that under Section 57 it may be taken judicial notice of.

I was referring to an issue of November 10 1945 of a weekly publication called Stamp Collecting published in London and edited by Douglas Armstrong a well known philatelist. In that issue at page 136 column 1, the following appears.—

Imphal Stamp that failed.

"So confident were the Japs that they would occupy Imphal, when they invaded Southern Assam that they actually prepared a special issue of stamps for use there. Needless to say these stamps failed to materialise, but our correspondent, Flying Officer T A. Broomhead informs us that he has seen proof impressions in the hands of the man who was responsible for the printing (in Rangoon). Two denominations appear to have been prepared viz. 3 pice plum and 1 anna red, both in the same design and roughly perforated $11\frac{1}{2} \times 9\frac{1}{2}$ (approx.) The subject of the vignette (illustrated) is the old Moghul Fortress at Old Delhi accompanied by the slogan On to Delhi. Bilingual inscription reads PROVISIONAL GOVERNMENT OF FREE INDIA. When it became evident that the Imphal

stamps would not be required, the dies were destroyed and the bulk supply of sheets printed in readiness was burnt with the exception of a small quantity salvaged by the printer”

At the top corner on the left-hand side is a facsimile of the stamp referred to in the above quotation

It is submitted that this document should be taken judicial notice of in support *inter alia* of proof that the Provisional Government of Free India had got prepared, issued or were about to issue postal stamps of that character. As appears from the above quotation, the dies were prepared under the direction of the Japanese

Counsel for the Prosecution I submit .

Judge-Advocate Would it not be more convenient to deal with this point in your arguments, and so shall I. There is no point, when the document is read whether the Court accepts it or not

Mr. Desai . I frankly submit to the Court that it is not a matter of such importance, but as the document was brought to my notice I thought it was my duty to put it before the Court. Nobody should question books of history, science, literature and art. It is a very accepted magazine in England dealing with this subject, edited by a very well-known man indeed

Then, Sir, it appears from the evidence that this Indian State had a Civil, and what I may call, an Army Gazette of its own. That is also established before this Court

On these facts, Sir, the first question of law which I wish to raise is this : Having regard to the condition in which this Free Government of India had been formed and was functioning, it was entitled to make war and it did make war for the purpose of liberating this country. That is the first and the main issue before the Court. This Court is trying civil offences under the Indian Penal Code, and there are two ways of looking at this question. One is that when two States declare a war—and I may assume for the purpose of this argument, because I cannot do more than place evidence before this Court for its acceptance, that the condition in which the new Indian State found itself, it was in a position to declare war—and having declared war, in so far as any acts in the prosecution of that war are concerned, they are outside the pale of municipal law. I will tell you, Sir, what I mean because I will elaborate this sufficiently to make myself understood by the Court. Supposing a German during the prosecution of the war had shot two or three or ten Britishers in England and was found in England, the question is, could he be charged with having committed murder. I submit never, for the simple reason that those acts were done during the due prosecution of the war which, unfortunately, in the present world of infirmities the International Law accepts. That is to say, what International Law accepts is that two independent countries or two States, as they are called, may make war on each other, and those who carry out any action in due prosecution of the war (apart from war criminals) is outside the pale of municipal law. Alternatively, if that is not sufficient for this Court (though I submit it should be in view of what I am going to read to you from accepted authorities on International Law) under Section 79 of the Indian Penal Code the acts done in due prosecution of the war were not offences. Section 79 of the Indian Penal Code reads thus

“Nothing is an offence which is done by any person who is justified by law . . .” And my submission to the Court is that under the term ‘law’ is covered ‘International Law’, and for that reason in so far that German—continuing the example which I was giving—who was arrested in England was concerned, his defence would be

“My country, my State, was at war with your States. Under the orders of my State, and in due prosecution of the war, I did the acts which under ordinary

normal circumstances might be offences, but which having regard to the circumstances are no offences at all."

Sir, it is unthinkable that any member of any organized army could be charged with an offence merely because he fought one or ten or a million men belonging to an army of the State with which he is at war. It is perfectly obvious to anybody that during the prosecution of the war, the municipal law relating to that country does not apply except, I quite agree, when one soldier steals the pocket book of another soldier. That I appreciate. But the question which we have got to bear in mind is the very important distinction. Was that act done in due prosecution of the war which one State declared upon another?

Once you get to that state, it is perfectly obvious that that municipal law must and is bound to remain in abeyance. It is impossible to arraign any individual for carrying out as a matter of duty acts which might otherwise be offences—killing a man every day, destroying property every day. In fact it is a very part of the war itself. Therefore the agreement is twofold. The alternatives are either that any act done in due prosecution of war is outside the pale of municipal law—that is why I pointed out to you in the commencement that the charge against these young men before you is not as if they had committed an act of private murder by reason of some private quarrel. The documents accepted by the prosecution clearly bear out that whatever they did they did as part of the prosecution of war. Remember that always, because without that the law cannot be appreciated with reference to the facts in issue.

But there is another way of looking at it, if you must. That is whether the exception provided by Section 79 is not equally applicable to the case. My submission to the Court is that whether you accept the one or the other makes no difference to the decision that I am asking for as to the immunity from those acts being offences at all because the very language of Section 79 is. Nothing is an offence which is justified by law. The Section assumes that in private life it might otherwise have been an offence. If you, gentlemen, in the due prosecution of war committed murders, could be civil laws as propounded by the other side be put into action against you, when in all honour you acted in prosecution of your duties as members of an organised army of a State that had declared war? It stands to reason—and it must—that any act done by a member of an organised army fighting under the order of one State against another State between which war exists is an act entirely outside municipal law. But assuming for the purpose of argument the Court requires some nearer justification. In the eye of the Court in so far as the administration by this Court is concerned it is fortunate that I am able to find the exception in the Indian Penal Code itself because the young men are being charged either under Section 121 or Section 302 of the Indian Penal Code and I am relying on Section 79 of the same Code which says in terms that it is not an offence. Supposing war was declared between two States and when peace time returned every individual soldier is called upon to say whether he killed so and so. I am quite sure that as I am addressing men of commonsense, you would laugh at the idea. But then quite agree that I would have to satisfy you that the new Indian State that declared war was entitled to do it in the sense of international law.

And now I will proceed to quote from books of international law on the question of right to make war. I am reading to you Vol. II of Dick Corbett's *Cases of International Law* under the heading of War, 1937 Edition.

International war is a contest carried on by an armed force either between States or between a State and some community or body which is treated as a State for the purpose of the conduct of hostilities. International war differs from other kinds of war in that it has the effect of setting up a new relation in law both as between the

declare war on Britain, they are rebels, and I am not here to justify it. What I am saying is this in a struggle between two organizations a stage must be reached where the organisation of the State and the organisation of the army are such that it is a war recognised by civilised nations, and if it is once recognised, then the immunity follows. As the books point out, we had the instance of the war between the South and the North of America and you have a declaration from Abraham Lincoln downwards that it was a proper war and there was nothing more to be said about it as soon as the hostilities ceased. It goes on to say

"Among the tests are the existence of a *de facto* political organization of the insurgents sufficient in character, population and resources to constitute it, if left to itself, a State among nations capable of discharging the duties of a State, the actual employment of military forces on each side acting in accordance with the rules and customs of war. If all these elements exist, the condition of things is undoubtedly war, and it may be war before they are all ripened into activity."

Therefore what I wish to say is this. that the test by which you will judge this case is, have we or have we not proved the existence of a *de facto* political organization of insurgents? I do not deny that they were insurgents. Apart from the other question to which I shall come presently, I will assume against myself that the people who declared war and who declared the Provisional Government of Free India were a set of insurgents, a set of rebels—I will assume that against myself

"As President Grant said in his message of June 13, 1870 'The question of belligerency is one of fact not to be decided by sympathies for or prejudices against either party. The relations between the parent State and insurgents must amount, in fact, to war in the sense of international law,'"

I call upon you to do the same. It is not a question of prejudice, it is not a question of prestige or what happens to the Army, to this or the other person. Please remember that you are here as judges, you are not politicians, I agree, and I do not want you to be such. If you find that there is a *de facto* political organization sufficient in numbers, sufficient in character and sufficient in resources to constitute itself capable of declaring and making war with an organised army, your verdict must be in favour of these men—no more and no less than the verdict on your own men for killing others, of which act you are justly proud.

That is the position in law.

Then I wish to call attention to another book on International Law—an accepted book and what is more it is borne out by all the earlier cases in which war was waged by what you may call insurgents against their own sovereign, if you must use that expression. This book is by Lawrence—page 309. The whole question before the Court under this particular head is whether or not there was a properly declared war in prosecution of which the accused before you did the acts which they did. And if they did that in due prosecution of that war, then there can be no question of any civil offence, as I think all of you in your own person will easily realise. I am not obliged in my civil life to kill anybody except on pain of conviction, but you are

Lawrence says.

"War may be defined as a contest carried on by public force between States, or between States and communities having with regard to the contest the rights of States, the parties to it having the intention of ending peaceful relations, and substituting for them those of hostility with all the legal incidents thereof"

These were no private acts done with a private motive or done for private individual benefit. They came to be done by them as members of an organised

army having declared war and the lawsays to them that no such consequences as the government demands can arise. Lawrence goes on

"It is true that two States are said to be at war as soon as one of them has received a declaration of war from the other"

Here there was in fact a formal declaration of war Then I call attention to a well known work of Oppenheim on International Law Oppenheim was Professor of International Law at Cambridge University He says thus—(Vol II, page 166)

"War is a contention between two or more armed States through their armed forces for the purpose of overpowering each other War is a fact recognised and with regard to many points, regulated but not established by International Law

Once you get to the stage of war naturally it is the primary purpose of each party to overpower the other Therefore in due prosecution of it, acts which might be called offences under civil law are not offences the very purpose is to destroy men and property the very thing which would otherwise be unlawful becomes right, becomes patriotic, becomes a duty

'In any case it is universally recognised that war is a contention, i.e., a violent struggle through the application of armed force

To be war the contention must be between States On the other hand to an armed contention between a suzerain and its vassal State the character of war ought not to be denied, for both parties are States, although the action of the vassal may from the standpoint of constitutional law be rebellion (Para. 56)

I have already said that States are those which have the right to make war like States

The first proposition for which I stand before this Court is this, that the two States sufficient in number in organisation and in resources may make war against each other That is the proposition to which I stand, and if they made war against each other then there is complete immunity for what might otherwise be a private offence. That must necessarily follow from the acceptance of war as a necessary evil in this infirm world and no individual member can be called upon to answer for the consequences of his acts so long as it is a properly declared war I shall call the Court's attention to Mr Hyde's book on 'International Law' Vol. III, page 1792 para. 648

So soon as a man is armed by a sovereign government and takes the soldier's oath of fidelity, he is a belligerent; his killing wounding or other war like acts are not individual crimes or offences No belligerent has a right to declare that enemies of a certain class, colour or condition, when properly organised as soldiers will not be treated by him as public enemies.

In other words the position is simple Any act done by members of an armed force against any opponent, which in ordinary times in a personal case would be a civil offence, ceases to be an offence altogether Otherwise, war and recognition is not a possibility

There is a very important decision of the Federal Court of the United States expressing the same thing I may be pardoned for multiplying authorities, but I do so because I feel that instead of paraphrasing the idea myself if I do it through the medium of an accepted authority, I might be able to carry better conviction. It is Vol. 168 United States Reports, page 250 It is the case of *Underhill v Hernandez*. I am reading the judgment of Chief Justice Fuller The opinion of the Court is as follows

"Nor can the principle be confined to lawful or recognised Governments or to cases where redress can manifestly be had through public channels. The immunity of individuals from suits brought in foreign tribunals for acts done within their own States in the exercise of Governmental authority, whether as civil officers or as military commanders must necessarily extend to the agents of governments ruling by paramount force as a matter of fact. Where a civil war prevails, that is, where the people of a country are divided into two hostile parties, who take up arms and oppose one another by military force, generally speaking, foreign nations do not assume to judge of the merits of the quarrel. If the party seeking to dislodge the existing government succeeds, and the independence of the government it has set up is recognised, then the acts of such government from the commencement of its existence are regarded as those of an independent nation. If the political revolt fails of success, still if actual war has been waged, acts of legitimate warfare cannot be made the basis of individual liability."

Chief Justice Fuller was deciding the case arising out of the war between the North and the South. A war might exist between what you might call an existing State and insurgents, and yet the insurgents, as they were called by the Federal Government, may have such organisation, force and strength that the relation between the two parties is one of the existence of war. Once the war exists, what is the legal position? If the party seeking to dislodge the existing Government succeeds, it is now accepted law that a successful rebellion is a Government established by law. The question is—what is the position in case of an unsuccessful rebellion. The law is, I submit, that if the stage is reached where the rebels or insurgents are sufficiently organised and are sufficiently resourceful to make war, then it is entitled to be regarded as war, and there will be no individual consequences to persons who take part in it. If actual war has been waged, and my learned friend himself was at pains to prove that a regular war was being waged, and he put forward document after document to prove it, then the question is. What is the distinction between a private individual waging war on his own and his waging war as a member of a force or organized State. That is the real distinction which makes one immune from the consequences. If actual war has been waged, then acts of legitimate warfare cannot be made the basis of individual liability.

There is another case belonging to the same period. It is *Ford v Surget*, 97 United States Reports, page 594, (equal to 24 Law F D.)

"The Confederate Government can be regarded by the Courts in no other light than as simply the military representative of the insurrection against the military authority of the United States.

"To the Confederate Army was however conceded, in the interest of humanity and to prevent the cruelties of reprisals and retaliation, such belligerent rights as belonged, under the laws of nations, to the armies of independent Governments engaged in war against each other, that concession placing the soldiers and officers of the rebel army, as to all matters directly connected with the mode of prosecuting the war on the footing of those engaged in lawful war and exempting them from liability for acts of legitimate warfare."

The first proposition is this that in view of the fact that a state of war existed between the Provisional Government of Azad Hind and the British, any act done in prosecution of that war has not the consequences which the Crown claims or might have claimed in the case of a private individual.

In International Law it is permissible for those who are subject to a foreign authority to organize themselves and having reached that stage of organisation and having an organized army to fight for liberation, whether it is successful or not during the process while the war is being carried on, there is immunity so far as individual members of the organized army are concerned for all acts done in due prosecution of war on a civilized basis (other than war crimes like those which are the subject of trial now in different parts of the world). That being so my submission is that the accused men before you are entitled to be declared innocent in that there is no civil or criminal responsibility for those acts. In terms of the language of the books on law the liability is on the State under whose direction they fought, and such liability in international law on the cessation of hostilities does not exist. Of course if a rebellion is successful, then it becomes a new Government and there is the end of it and there will be no tribunals but it is only in a case in which it is not successful that the question arises and the answer is given in my clients favour by International Law.

The next point to which I wish to advert is the alternative point which I made under Section 79 of the Indian Penal Code. The issue which arises apart from the Indian Penal Code, is an issue of great international importance. It has arisen if I may say so in its actual form for the first time though the authorities directly or indirectly support the principles on which my contention is based. At the same time appearing before this Tribunal it becomes my duty to justify it on what I may call a narrower ground to the extent to which it is necessary, for I do feel that before a Tribunal constituted as this is it is equally important that I should put myself within the narrow sphere of the Indian Statute itself. Then I submit assuming my submissions are correct and accepted the hands of the Tribunal are fairly strengthened. The words which I referred to in Section 79 of the Indian Penal Code are justified by law. The question is what is the meaning of the word law appearing in Section 79 of the Indian Penal Code. If I can satisfy this Court that the law there comprehends and includes international law I submit my Honourable Friend on the other side would have hardly any case to present to the Court at all. If the word law in Section 79 includes International Law so far as the immunity which I have described before is concerned then I submit the three men at your bar are entitled to plead that they were so justified in the actions which in ordinary private personal life might have been offences under the Indian Penal Code. I wish to call your attention to a certain number of authorities on the question. The first authority to which I call your attention is Blackstone's Commentaries in Book IV but it is volume II in this binding. It is accepted at all events by British lawyers that Blackstone's Commentaries are the fountain source of Common Law of England and it is a matter which I wish to particularly assert before this Court. The page that I am reading is 2237 (Vol. II edited by W.C. Jones). Most of us who are not lawyers are familiar with Blackstone's Commentaries and know that he is father to a very large extent of Common Law. Blackstone's Commentaries are relied upon in British Courts as a very authoritative exposition of the law on the particular question which he has dealt with.

'In arbitrary States this law wherever it contradicts or is not provided for by the municipal law of the country, is enforced by royal power but since in England no royal power can introduce a new law or suspend the execution of the old, therefore the law of nations (wherever any question arises which is properly the object of its jurisdiction) is here adopted in its full extent by the common law and is held to be a part of the law of the land.

So that as soon as the Court has ascertained what is the international law on a particular point before the Court, it is the bounden duty of the Court to

administer that part of International Law as a part of the law of the land, and hence it is that I am submitting to the Court that the word 'law' in Section 79 should be given that extensive meaning which the law has by the Common Law of England

The next work on which I rely for the purpose of the meaning of the word 'law', meaning thereby that 'nothing is an offence which is justified by law', is Oppenheim's International Law. The question is what is law, and it is in support of that that I am submitting next Oppenheim's International Law Vol I, Fifth Edition, page 36, article 21a

"In view of this wide divergence of doctrine it is necessary to inquire into the actual legal position in the principal countries in the matter of International Law and Municipal Law

(1) As regards Great Britain, the following points must be noted

- (a) All such rules of customary International Law as are either universally recognised or have at any rate received the assent of this country are *per se* part of the law of the land. To that extent there is still valid in England the Common Law doctrine, to which Blackstone gave expression in a striking passage, that the Law of Nations is part of the law of the land. It has repeatedly been acted upon by Courts. Apart from isolated *obiter dicta* it has never been denied by judges. The unshaken continuity of its observance suffered a reverse as the result of the *dicta* of some judges in The Franconia Case in 1876, but West Rand Central Gold Mining Co v The King decided in 1905, must be regarded as a reaffirmation of the classical doctrine."

So that ever since the time of Blackstone, until the last edition of Oppenheim, which belongs to the year 1937, there has never been any question that on any issue in which the doctrine of international law is accepted to be the international law it becomes a part of the law of the land, law of the land in England, and law of the land here

Next, I call attention to the work of an American Jurist Hershey on International Public Law and Organisation, page 14, 1927 Edition

"International Law is a part of our law, and must be ascertained and admitted by the Court of Justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the custom and usages of civilized nations, and, as evidence of these, to the works of jurists and commentators who, by years of labour, research, and experience, have made themselves peculiarly well-acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is."

So, you will see from this quotation which has come from Justice Gray in the case which is cited—195 United States Reports, page 113 at page 163, that it has been accepted that while administering justice it is your bounden duty to find out, recognise and apply the principles of international law where a person at your bar seeks justice on the ground that the act with which he is charged is an act justified by law and that for the purpose of ascertaining it you may have resort as it is stated by the learned Judge himself to "the usages and customs of civilized nations, and as evidence to this to the work of jurists, commentators, who by years of labours, research and experience have made themselves peculiarly well-acquainted with the subject of which they treat."

Therefore I plead that when the time comes for your deliberation you will carefully of which I have no doubt, and diligently of which I am perfectly conscious study and apply your mind to the citations which I have already given and which I am about to give. Because according to the well accepted canons, the commentators who by years of labour, research and experience have made themselves peculiarly well acquainted with the subjects of which they treat, and such works are resorted to and have to be resorted to by judicial tribunals I have got Sirs, the original judgment from which this quotation is given. The judgment is reported in 175 United States Reports in the judgment at page 700. The case is Paquet Habana, Appeals from the District Courts of the United States for Southern Districts of Florida. The judgment of Mr Justice Gray on this question is to be found at page 700. I do not wish to read it again, because I have already read it from the textbook in which it is now accepted. At the same time I may be pardoned for pressing this point upon the Court because then the issue before this Court becomes exceedingly narrow. If I am able to persuade this Court, as I submit I hope to do that in administering the law you are bound to have regard to international law there will be no difficulty whatever in the way of the defence which I am presenting. Then the Statute law has made it incumbent upon you, and in fact has declared that nothing is an offence which is justified by law. If therefore the acts which are said to be offences are declared not to be offences, and if I am able to show that the law so declares them, then it will be your duty to declare that notwithstanding apparent confusion of thought, words like treason and so on will have no value.

The law of treason in India is codified. It is to be found in Chapter VI of the I P C (Offences against the State) in Sec. 121 and following Sections. Therefore let me caution the Court against the general use of words like treason. The question is whether my clients who have been charged under Sections 121 and 302 have or have not in doing those acts, been justified by law i. e. the law of nations, and if they are so justified the law of this country declares that it is not an offence. In other words the law of this country recognises that there may be acts which if done in private life for private motive might be an offence but which in public life or public duty are not an offence. A Judge is not liable as an abettor of murder because he orders a man to be hung because he is justified by law. Similarly and equally if not more emphatically the member of an armed force having declared war if during the state of that war he has committed acts which in private life might be offences, the law says nothing shall be an offence. Therefore I do wish in so far as in me lies, to press this point upon your attention, because the first line of argument which I submitted to the Court stands and I submit to the Court that is the law. In other words the law is that in the prosecution of war the acts which take place are beyond municipal law. But assuming for the purpose of argument I have to take my stand on a narrower ground. Then the law of this country, the Indian Statute Law itself enjoins upon you that if I can show justification by means of international law for those acts then my clients are entitled to a verdict in their favour. I say this to you in the language of one of your greatest poets that if in so far as God grants me the tongue of persuasion and you the ears of hearing I have not the least doubt that when you have considered the cases before you you will have no difficulty or hesitation to decide in my favour on that narrow ground.

The next point to which I wish to call attention is Moore's International Law and Digest page 2 Vol. I and this is how it is stated

It is thus apparent that from the beginning the scene in question denoted something more than the positive legislation of independent States and the term international law which has in recent times so generally superseded the earlier titles served to emphasize this fact. It denotes a body of obligations which is in a sense

independent of and superior to such legislation. The Government of the United States has on various occasions announced the principle that international law as a system is binding upon nations, not merely as something which they may be tacitly assumed to agree but also as a fundamental condition for their admission to the full and equal participation in the intercourse of civilised nations."

I therefore cannot more emphatically assert than the ground on which I appear before the Court and I have no doubt that it will rise superior (in the language of one of the cases that I read) to all question of prejudice and come to the right conclusion in considering Section 79 and the immunity granted by it.

Just one more passage to which I wish to call attention. It is the judgment of the Privy Council on the this question. The last under these heads is a judgment of Their Lordships of the Privy Council, reported in a recent number, 1939 appeal cases, page 168. There a question of international law arose. The name of the case is *Chang Chi Chu*. It was a case of murder committed on a Chinese ship and that is how the question arose of the liability of the prisoner to be tried. And the question arose to what extent in international law it was necessary to consider whether the prisoner was liable. The contention shortly stated was that the Chinese ship was so much floating Chinese territory. That was the claim made under the international law. Their Lordships of the Privy Council held that under international law it is probably not correct to say that a floating ship of foreign power is so much, what you may call, island foreign territory. But they have ruled by reason of the respect accorded to comity of nations, that anything that occurs on a foreign ship is not within the authority or jurisdiction of municipal law. In this particular case what they held was that inasmuch as the ship itself accepted the authority of the power which was exercising authority in those waters, they held it became an exception. But in considering the applicability of international law to the question whether or not the Court had jurisdiction to try this particular Chinaman, the question arose to what extent international law has to be considered and the judgment of Their Lordships delivered by Lord Aitkins is very important from this point of view. I would not enter into the question of details which arose in that case though by themselves they are interesting enough. But I may say this that the observations which I propose to read are necessary and essential because the whole defence to the charge of murder, and the want of jurisdiction of the Court, were based on the ground that under international law the Court had no jurisdiction and for that purpose the Court went into the question of what was the appropriate international law on the question. Their Lordships said with reference to the necessity of the application, or rather with reference to the obligation to ascertain and apply international law ourselves was a part of the law. That is how that part of the case is stated.

Page 167. "Their Lordships entertain no doubt that the law is the correct conclusion, namely, that a ship is not so much floating part of a foreign territory, but that immunity is granted for whatever happens in that ship in so far as jurisdiction is concerned. It more accurately and logically represents the agreement of nations which constitute international law, and alone is consistent with the paramount necessity expressed in general terms for each nation to protect itself from internal disorder by trying and punishing offenders within its boundaries."

It must always be remembered that in so far as, at any rate, the courts of this country are concerned, international law has validity in so far its principles are accepted and adopted by domestic law. There is no external power that imposes its rules upon our code of substantive law or procedure. The Court acknowledge the existence of a body of rules which nations accept among themselves. On any judicial issue they seek to ascertain what the relevant rule is, and having found it, they will treat it as incorporated

into the domestic law so far as it is not inconsistent with the rules enacted by any Statute or finally declared by their tribunals. What then are the immunities of public ships of other nations accepted by our courts and on what principle? I say that in this particular case not only there is no Statute to the contrary but in fact the Statute imposes that obligation, coming back to the action of Section 79 viz., nothing is an offence which is justified by law. Therefore what you have got to do Sirs is to ascertain the relevant body of international law and having done so apply it to what is described as domestic law. Therefore there can be no reasonable doubt that in the construction and application of Section 79 the submission which I have already made on the immunity of individual members of an armed force fighting in a war properly declared, that immunity is a part of international law and therefore is a part of national law. And I submit that your own experience whenever emergencies of war have arisen should bear ample testimony to that position. Each time a soldier fights under the orders of a state in a war properly declared, if he were to consider what would be his liabilities, I am afraid the efficiency of war would be a very difficult process indeed. It is an assumed part of the law of nations that once you become a member of a fighting force of a properly qualified State entitled to make a war there is an end of all individual liability for the acts which if they were private acts for a private purpose might be an offence within the law. Though according to my submission the first is an essentially correct ground in any case the justification by law is a sure ground on which I stand before this Court. Hence I submit that nothing is an offence which is justified by law and I therefore say that the acts with which the accused are charged before the Court are justified by law that is to say by the international law and therefore, there can be no question of a personal or individual liability.

This question has been considered in a different form or perhaps in different language because I wish to point out to you as you have seen in the earlier works to which I referred, the law of war is often described as the law of belligerency. I wish to point out to the Court, as I shall presently do what is the law of belligerency in other words, who are entitled to be treated as belligerents in the light of international and what I may call, municipal or domestic law.

For that purpose I wish to call attention to the authorities which clearly show where and how the law of belligerency rests. I again refer you to Oppenheim on International Law 1944 edition Vol II. He was professor of international law at Cambridge and falls within the description which I gave of men who have by their labour and research and experience and knowledge, contributed to the formulation of international law on many questions. The present question is dealt with on page 200—Article 76A.

Recognition of belligerents by other States is not as a rule binding upon the State. Notwithstanding such recognition it is entitled to treat the insurgents as traitors but the position is controversial with regard to recognition as a belligerent power granted to separate armies which comprise subjects of the enemy who are fighting to free their nation from this rule and which are responsible to an authority recognised as representing the nation in question.

That really epitomises the whole of the issue—' but the position is controversial with regard to the recognition as a belligerent power granted to separate armies which comprise subjects of the enemy who are fighting to free their nation from this rule and which are responsible to an authority recognised as representing the nation in question.

To translate it according to law the accused before you were members of an army responsible to the Provisional Government of Free India fighting to liberate themselves from the rule of the army of those who were fighting against them and I

submit that is precisely the case before us. The author goes on and gives instances of cases of that kind, and I want to draw your particular attention to those historical instances which fortunately have occurred before, so that I stand before you on much more solid ground than if this were perhaps actually the first instance.

"Thus, in the year 1918, during the world war, Great Britain, France, Italy and the United States of America recognised Czecho-Slovaks as co-belligerents. Similar recognition was granted in the year 1917 to the Polish National Army, composed to a substantial degree of the subjects of the enemy powers. It has been maintained that as in the case of insurgents in a civil war—(quotations of which I have already given)—the enemy is entitled to disregard such recognition and treat the members of the insurgent army when they fall into his hands, in accordance with the provisions of the criminal law. The better opinion is probably that when such recognition is granted by an adversary to large bodies of men effectively organised on foreign soil in anticipation of independent nationhood, a point is reached at which the belligerents, confronted with disaffection and desertion of a considerable number of his subjects engaged in hostilities against him, can no longer, without exposing himself to justifiable retaliation, assert the provisions of his own criminal law as the only legally relevant element in the situation."

I want to draw your attention pointedly to the conditions which are here laid down and which, I submit, we have more than amply fulfilled. I ask this Court to declare that that is the better opinion, and I do say that we have reached a stage far in advance of the illustration given by Oppenheim. In this case not merely men were effectively organised, but there was a regularly organised army. This has been amply proved by the Prosecution—thanks to them for that. They have amply proved that there was a regular army, a properly organised army—on foreign soil it is true—but with this added qualification in my favour, that Indians residing in places where the army was organised, numbering not a few hundreds, even a few thousands, but two million men and women and children, through 230,000 adult men and women swearing allegiance to that Provisional Government, for the purpose of liberating their country—which unfortunately failed, but nonetheless the condition required that you may at your peril call to aid the criminal law of the country against such an organisation—effectively organised on foreign soil in anticipation of an independent nationhood. It is true—and that is why I read the Proclamation to this court—I read it with a view to show to you that the object with which on foreign soil an independent government was formed was the liberation of their country. It was undoubtedly in anticipation of independent statehood, and of course if the independent state had been established by the successful prosecution of force, as I said, this tribunal would not have been there to try them. It was because it was done in anticipation, which failed, and which does not detract from the point, that a stage is reached in which a belligerent confronted with the disaffection and desertion of a considerable number of his subjects engaged in hostilities against him, can no longer assert the provisions of his own criminal law as the only legally relevant element in this situation. In other words, the legally relevant element in this situation is that we, meaning the two armies, had reached a stage where, having reached a stage of war—there can be no question at all that under Section 79 we are entitled to the justification which the laws of war give to belligerent armies. And that no acts done during the course of the prosecution of the war are matters of what you may call domestic law, pure and simple, which would be as if any one of these three accused went and did any of these acts out of private motive. Therefore, it is essential to remember that in all these cases the substance of the law is this: two independent States can always make war and the members of their combatant forces are unanswerable for

their acts. Only the question arises, or the intermediate stage arises whether without having reached the stage of independent statehood (to take the words of Oppenheim) you have attained a stage, and whether having founded a state for the purpose of liberating your own country you are so organised, both the state and the army that it assumes the proportions of a state and as a result of the war—as much a war between two independent states. I am pleading before you that we have proved before this court, and the documents which otherwise we would not have had the benefit of and have generously been produced by the prosecution all of them distinctly and clearly showed that we had reached that stage and this court would not only be justified but, I submit, bound in law and in conscience to regard the accused as belonging to that organisation and as member of such a belligerent army they are entitled to all the privileges of the laws of war. In other words immunity for personal acts carried out in due prosecution of the war as you yourself in your own person would claim.

The next book to which I would call attention is the British Year Book of International Law 1937 page 18. It says

What we call belligerent recognition is not so much recognition even temporary and provisional of a new government, as the recognition of the existence of a war

I may explain what is meant here, because the recognition comes as a stage when it has not yet succeeded in establishing its own government. Of course, if for instance perchance this very army had succeeded in its aim, as the maxim of international law is the successful revolution is the government established by law. But earlier than that there is the stage at which it is in a state of war and that is all that is necessary for the purposes of my case. If I can establish that they were making war which is regarded as a stage of belligerency by international law they are entitled to the same privileges and immunities as would be accorded to the armies of two independent nations. It continues

The existence of war is purely a question of fact, but if we recognise the fact that a war is being carried on then the recognition of the insurgent government follows as a necessary consequence. Wars can only be carried on by governments and there must be at least two parties to every war. Much of the confusion which obscures the current discussion of the Spanish problem arises from the failure to observe this correct logical consequence. The true doctrine is that recognition of the insurgent government is the necessary and logical consequence of recognising the fact of war.

Therefore I submit that once you recognise, as I submit this court is bound to do on the evidence before it, that there was a regular properly declared and properly prosecuted war then I submit there can be no question that the acts of these men, done in due prosecution of that war are completely justified by international law and therefore by law.

The instances are given in the Year Book of International Law. This is what it says

‘Lest this should seem to be merely doctrinaire, that is the kind of criticism with which we people are sometimes apt to run away,—and theoretical opinion I shall try to fortify my doctrine by authority. In 1828 Don Miguel the Pretender to the throne of Portugal was carrying on war by sea and land against his niece and nominal fiancée the child-Queen Donna Maria who was recognised by Great Britain and other powers as the legitimate Sovereign of Portugal. At no time during the struggle was Don Miguel ever recognised

by Great Britain under any form *de jure* or *de facto*. In 1828 he proclaimed naval blockades of Oporto and of the Azores. These blockades were notified to the British Government which published the notices in the London Gazette and communicated them to the committee of Lloyd's. The King's Advocate Sir Herbert Jenner advised the British Government that the blockades, if effectively maintained, might be recognised as valid, although no form of recognition had at any time been conceded to Don Miguel."

In other words the distinction that is sought to be made is that you may recognise the state of belligerency without necessarily recognising the State.

Refusal to recognise the blockade, so Jenner advised, would be a departure from the neutrality which this country had professed in the civil war. Twenty years later the Palmerston Government, following the advice of Sir John Dodson—and I hope the Judge Advocate will advise you accordingly—then the Queen's Advocate decided to recognise the blockade of Trieste by the Italian insurgents during the Revolution of 1848, although there had been no other act of recognition of the insurgent government.

The point I am trying to emphasize is this that you need not necessarily recognise your opponent as a government, and yet during the course of the war, once you recognise that it was a proper state of belligerency, then the immunities and privileges which I described before follow, because the men, and in modern times the women, who are fighting for the insurgent government, are recognised for the purpose of these immunities. It goes on

"Upon the point which we are now discussing Dodson's opinion is very clear. 'It is sufficient' he says 'to justify a blockade if duly maintained that a *de facto* war is carried on by Sardinia and Venice on one side and Austria on the other'."

Even more clear is the opinion of a later Queen's Advocate Sir John Harding when advising the Government in 1860 upon the question raised by Garibaldi's rebellion. This is perhaps nearer in its application. This is the quotation from the opinion of Harding

"If Her Majesty's Government considers that a civil war actually exists between the dictatorial Government of Southern Italy and that of His Majesty the King of the two Sicilies in which Great Britain is to be strictly neutral and that the dictatorial government has in fact attained (howsoever) an independent and sovereign existence and governs *de facto* a portion of the Neapolitan dominions, then Her Majesty's Government may without violating or disregarding the law of Nations and without encouraging piracy, so far recognise the acts of this *de facto* government as to admit the validity of an effective blockade, maintained by a competent naval force acting under its orders, for to acquiesce in the capture and condemnation by it of articles of contraband of war designed for the use of the King of the two Sicilies."

The belligerency which existed was between what you might call the King of Italy and the insurgents, and the advice of Sir John Harding was that if there was a *de facto* war between the two, then the rights of the belligerents should be accepted and acknowledged. In other words, supposing they took as prize of war ships belonging to what you might call the constituted King of Italy, it would still be a perfectly good prize.

In the course of the same opinion, Harding pointed out that Garibaldi and his officers could not possibly be regarded as pirates, since they were carrying on war in a regular manner and had been dealt with on equal terms by British naval officers. The three opinions which I have just cited are those of British law officers ranging over the period from 1828 to 1860.

Without further multiplying citations I will therefore summarise their effect by saying that what we recognise in these cases is the existence of war. The recognition of the insurgent government is merely incidental or consequential since a war implies the existence of some independent authority which carries on the war.

The next thing to which I wish to call your attention is the recognition this matter has received from the British Government through the then Foreign Secretary Mr Eden. I am reading from the Hansard which is the recognised report of the Debates of the House of Commons. I am reading from the debates of the 14th April 1937 page 1133. This is what I have here.

'The Leader of the Opposition spoke earlier today as though the Government had given something up in this case. Of course, we have not given anything up because you can never grant belligerent rights to one side only they must be granted to both sides if they are granted at all.

This issue arose on the question of the Spanish war.

'The Honourable Gentleman remarked that he thought that never in history had there been any question of granting belligerent rights early in a dispute. As a matter of fact in the American Civil War we did grant belligerent rights within six weeks of the outbreak of the Civil War.

'Mr Noel Baker said. The Government themselves declared a blockade, which, as all international lawyers will agree, compels them to grant belligerent rights to both sides.

Mr Eden. We ourselves made, in point of fact a declaration of neutrality out of which arose the granting of belligerent rights to both sides. That is what we did in the American Civil War. Of course, that does not stand alone. It is not the only example. The Honourable Gentleman is probably familiar I think, as I know something of his associations in this respect, with the Greek rebellion against Turkey in 1821-25. At that time also—remember that in each case these were insurgents against their parent State fighting for their liberation and it was during the course of that struggle that the rights of belligerents were granted by Britain. At that time also belligerent rights were granted and His Majesty's Government voiced this opinion to which I would draw the attention of the House; the character of belligerency was not so much a principle as a fact that a certain degree of force and consistency acquired by any mass of population engaged in war entitled that population to be treated as a belligerent and even if this title were questionable, rendered in the interest well understood of all civilised nations so to treat them.

The position of British politicians and British law on the question of the recognition of belligerency even as between what I might call the parent State and the rebel States has always been recognition of belligerency.

At that time Canning was the Foreign Secretary of this country and Professor Philips in his History of Europe deals with this very interesting chapter of modern Greek independence. He says

'Curiously enough as in the affairs of Spain, so now his (Canning's) attitude was frankly based upon the interests of England. The interests of England in his opinion demanded peace. The recognition of the belligerent character of the Greeks was necessitated by the impossibility of treating as pirates a population of a million souls and of bringing within the bounds of civilised war a contest which had been marked at the outset on both sides by disgusting barbarities.

'Those were both cases in which belligerent rights were granted. A third and perhaps, in a way, even more remarkable case, was the revolt of the Spanish

Americans Colonies against the Spanish Government, from which resulted the establishment of the South American independent Republics as we know them today ”

So that you have instances on both sides of the line You have instances where those who rebelled against a State for their own independence ultimately succeeded, but while they were in a state of war both were recognized as belligerents Those others in which they did not succeed but nonetheless during the interval of the struggle, they were both recognized as belligerents

“A third, and perhaps, in a way, even more remarkable case was the revolt of the Spanish American Colonies against the Spanish Government, from which resulted the establishment of the South American independent Republics as we know them today In that dispute we recognized the rights of the belligerent colonies .”

People were actually revolting against their own Government for their own freedom, and one need not be apologetic in this period of world history to say that the subject race may free itself

“In that dispute we recognized the rights of the belligerent colonies long before we recognised them in any other way, and, when I heard the Right Hon Gentleman below the Gangway speaking earlier this afternoon, I bethought me that he might well have remembered the enthusiasm shown by the Liberal Party of that day for those new States across the Atlantic to whom we accorded belligerent rights, though they were rebels against their own mother country ”

Sir, I say that I could not quote a stronger authority for your adoption than the action of the British Government as stated authoritatively by the Foreign Secretary of Britain and I would like to read it again in order that I may not miss the point

“I bethought me that he might well have remembered the enthusiasm shown by the Liberal Party of that day for those new States across the Atlantic to whom we accorded belligerent rights, though they were rebels against their own mother country ”

And I say that the same point arises for you It is true that those who fought were rebels from the point of view of constitutional law as against their own King—and later on I will come to the question of allegiance—it will be my duty to analyse before you what that means, though it is irrelevant to the issue as I shall point out The very fact that those colonies were fighting against their mother country as it is called, shows that at that time there was what you may call ‘legal allegiance’, but legal allegiance cannot be a matter of perpetuity because if it becomes a matter of perpetuity no subject race will ever attain freedom For the moment, the point with which we are concerned is merely this that while in a state of belligerency Britain recognized the rebels as proper belligerents, those who were fighting against their mother country, and if that belligerency is recognized, I venture to submit it will be far too much to ask this Court to refuse it to this Provisional Government of Free India and the Armies fighting under them Mr Eden goes on—because he wanted to make the point that the State will be recognized not only when it comes into existence, but while still the struggle goes on Now I read

“What I wish to deduce from these three examples is that the natural thing,” mark the words—

“ .. when a struggle has reached the large dimensions of the present war in Spain, would have been to recognise its belligerent character, and for States whose maritime interests are involved, as ours are, to grant belligerent rights to both sides ”

In other words as he put it before, it is essentially a matter of fact. If we find that the struggle,—call it rebellion, call it insurgence, call it what you like,—has reached such proportions that you cannot control it by normal means, then you must recognize that it is a state of war, and once you recognize that it is a state of war, those who fight in pursuance of the declaration of war and in prosecution of it are entitled to all the rights of belligerency. Then he goes on

‘That would have been the natural thing to do. Recognition of belligerency is, of course, quite distinct from recognizing anyone to whom you give belligerent rights as being the legitimate Government of the country.

And that is what I want to impress upon you that if it is asserted on the other side that it is required for the purpose of immunity from all acts done in due prosecution of the war that the Provisional Government should have been recognized by Britain, it is a completely futile argument. In fact the very hypothesis cannot exist. The hypothesis is this. The rebels as I have called them—I do not mind it—are fighting for their freedom against another country. If they succeed, the Government will be recognized but, in the meantime, during the course of fighting the Government won't be recognized, but what is recognised is belligerency. I shall presently point out what it involves—immunity from all acts done in due prosecution of the war.

Recognition of belligerency is, of course, quite distinct from recognizing anyone to whom you give belligerent rights as being the legitimate Government of the country.

It is a fact that the Provisional Government was not then and did not become the actual Government of India but that does not matter at all. What are the rights and privileges during the course of the struggle, and if I am right in my submission to the Court there can be no doubt that during the course of struggle there was only one duty owed by men like the accused before you and that is to prosecute that war under the orders of the Provisional Government,—and anything that they did by way of prosecuting that war gives them complete immunity.

It has nothing to do with it. It is a conception simply concerned with granting belligerent rights which are of convenience to the donor as much as they are to the recipients. I will not go into the reasons, but for a variety of reasons in the present dispute we are not granting belligerent rights.

So that you have here recognition of an adoption of the principle supported by precedents as stated by the Foreign Secretary of that day.

Then there is a quotation from Mr. Churchill's speech during the course of the same discussion to which I wish to call your attention. That is on the 14th of April 1937 page 1068.

When I hear my Right Hon. friend opposite speak of rebels, I must remind him that sitting there as he does in the seat of the Whigs, he is departing from Whig principles. The sacred rights of rebellion was one of their first doctrines. In regard to liberal statesmen there the Right Hon. Gentleman sits, the successor to Mr. Gladstone, striving to uphold the great principles for which his party stands. But what was Mr. Gladstone's record? He was a strong supporter of rebels. He was a strong supporter of the rebels in the war of American secession. There, we had a civil war in which the rebels were not only rebels but slave owners. Mr. Gladstone went about the country and in a famous speech either at New Castle or Hull proclaimed that the Confederate States (i.e. the Southern States) had not only founded an army, but that they had founded a navy, they had founded a Government and more than that they had founded a nation. (An Hon. Member. He was a Tory then.) He was not a Tory

then Therefore, before one takes the view that rebels are like mad dogs to be put down and shot at sight, we should remember these things ”

In other words, in that debate the Government of the day in England recognized that while a rebellion may or may not be successful, while it has attained a stage of war, you must recognize and give immunity to those people who fight on either side, for what justification is there on the part of one set of them to fight and claim immunity as against the other side? If the I N A shot, I daresay the British Indian Army equally shot from the other side. The justification is equal in both cases in so far as this particular struggle is concerned. Mr Churchill goes on

“If we search the history of the 19th century we shall find many cases where the British Government have actually espoused the cause of rebels. The Hon Member (Mr Maxton), the leader of the Clydeside party, with his customary candour and frankness, made no bones about supporting rebels. He declared that the question was whether or not they were rebelling for the thing you wanted ”

I am quite certain that we have proved to the hilt that they were rebelling for a thing they wanted which is fully approved of by any civilised human being. There cannot be two different laws for two different sets of people. “Everyone will support rebels who are fighting for the things of which they approve and they will criticise the Government which is for the things which they dislike. Therefore do not let us have too much of an attempt to make out that the Government in Spain have all the right on their side and the rebels none ”

The Court will appreciate that I am pleading for a very limited right. I am not here before this Court on the question of the recognition or non-recognition of the unfortunate failure of the Provisional Government to obtain the independence of India. That is not the issue. There is a very narrow issue. It is this. While they were fighting and struggling, were they or were they not entitled to the rights of belligerents?

Mr. Churchill goes on. “Therefore do not let us have too much of an attempt to make out that the Government in Spain have all the right on their side and the rebels none. It is one of the most evenly balanced struggles and one of the most unpleasant and certainly it is the least cause for us to espouse. If we were to take the course which is recommended by the Right Honourable gentleman and to break the blockade, if we throw the might of the British Navy into the scale, could he guarantee or could he be sure that we might not provoke that very alignment and crystallisation in Europe along those unnatural and idiotic—perhaps I had better say ideological—lines which it is our whole message and mission to rupture, or least to avoid ” So that Sir, even up to the very last war, up to the year 1937, just on the eve of the last war, it is perfectly obvious that a distinction has been maintained, a distinction which I cannot too often insist upon between a state of belligerency which may be recognised and the rights accorded without the ultimate success of those who fought for the cause for which they could fight. They may fail but nonetheless in the interval they are entitled to the rights of belligerency ”

Then, Sirs, there is a further point and I tell the Court that it is a question of fact. This Court should find that this Provisional Government had ceded to it the territories which I have described. But while insisting on that finding of fact, because we submit that it was a fact, I wish to point out to you that from the point of view of belligerency it is quite unnecessary that the particular Government for the time being need have any territory in its possession at all, and for that purpose, I wish to give you illustrations in history. Take Belgium in the last war and all the emigré Governments residing in London during the last but one war and the

last war. What were those emigre Governments? Not an inch of territory which they could call their own at that time and yet who ventures to say before this Court that a member of the Dutch Army or for that matter the Polish or the French or the Yugoslavian Army may not fight to liberate its own country and not have the right to claim, even if they failed, all the rights and immunities as far as their soldiers are concerned of belligerency. I think, Sirs, the last war has illustrated more than any other that some of these old principles may be overdone and that it is quite unnecessary in order that you may have a state of war, that country that is fighting a war on one side need not necessarily at that time have, what I may call in the common English parlance, a local habitation though it may have a name. Many of these emigre Governments were deprived of their territory and the fact that they were deprived of their territory temporarily, or the fact that the Indians were deprived of their territories for 150 years, makes not the slightest difference to the point that we are submitting to the Court. What we submit to the Court is this. They were all liberating armies, trying to liberate their country and therefore were entitled to the immunities of those who were fighting. The next question before you Sirs, is this. There is no such thing as the law of limitations in dealing with nations so that if either the Dutch or the French or anybody else was trying to fight for the liberation of their country while having lost their territory to the enemy can it ever be argued in a British Court that those who were fighting to liberate their country were not fighting a struggle where they were entitled to the rights of belligerents. Supposing any one of them failed, is it to be said in a British Court that they were not fighting a struggle to which all the laws of immunities and privileges of a fighting army exist? I therefore urge upon you not to take the instance that you have before you as any different because we happen to be Indians. Remember that. They were trying to liberate their country. I am not here to espouse the cause of the Provisional Government. I am pleading for men who fought under the orders of their Government for the liberation of their own country. If therefore they were entitled to fight for their own country for the purpose of liberating their country I am entitled to tell this Court that they are entitled to the privileges of belligerency. One more instance on which there was a certain amount of struggle in proving the facts is the case of the Maquis in France. Remember the facts. At the time when the Maquis were fighting the *de facto* and the *de jure* Government in France was Marshal Petain's Government and the latter were allied with Germany. The Maquis were fighting in order to release France from their own French Government which was allied with Germany and what did Eisenhower say? I am going to read that to you because it is a very short document and it is very important. At that time it was apprehended that the Maquis might be dealt with unjustly by the then French Government, because it was the *de jure* Government of the time and would shoot as rebels very much the same as the Advocate-General will later on argue to say about the persons who took part in the Indian National Army. But you have the pronouncement of no less a person as Field Marshal Eisenhower that that shall not be. In other words, if persons with a view to liberate their Government fight against their own Government, they are entitled to the rights of belligerents. That was the reason why I was very anxious that I should be able to prove that statement. Sirs, this is the statement which has been proved and I may incidentally agree to what my learned friend insisted upon that I should put in also the German view of the matter. If he prefers that it is his look-out. I do not. I prefer the American and the British view.

"There is conclusive evidence that the German forces in France are—

(I am obliged to my honourable friend for saying that he does not doubt the authenticity of the source, meaning that it came from General Eisenhower. Of course he insisted that I should put in the second passage and I leave it to you to

judge which of the two you should prefer, with the submission that you should prefer Eisenhower to General Keitel)

"Now recruiting members of the French resistance group as France Tireurs and today an announcement issued from SHAEF in the name of General Eisenhower makes these four points

- 1 That the French forces of the interior constitute a combatant force commanded by General Koeniggaud forming an integral part of the Allied Expeditionary Forces
- 2 That the French forces of the interior in the Maquis bear arms openly against the enemy and are instructed to observe the rules of war They are provided with a distinctive emblem and regarded by General Eisenhower as an Army under his command
- 3 Reprisals against resistance groups violate the rules of war by which Germany is bound "

This is what I ask you to do that anything done against the members of the Indian National Army fighting for their freedom according to the rules of war—I submit that any action taken against them is a breach of international law

- 4 "Every effort will be made to trace the authors of any atrocities against members of the forces under General Eisenhower's command Steps to this end are already being taken "

Then the rest reads

"General Eisenhower in a declaration broadcast to the B B C tried to legalise the French partisans as a fighting force ."

The question that arose was somewhat delicate from a constitutional point of view, because for the time being the then French Government was still under the thumb of Germany The people of France for the time being fighting against their Government which was pro-Germany were undoubtedly guilty of fighting against their own Government, but the ground of immunity accorded was that they were fighting alongside the allies for the purpose of freeing France What is the distinction, I ask, between those who fought on the side of, even if we say Japan, for the purpose of freeing their own country? With very great respect it is difficult to understand any distinction In other words, if the Maquis were entitled to all the privileges and immunities of a good fighting force for liberating their own country, I cannot see how you can fail to accord a similar treatment to those standing in the position of the Indian National Army

Then, I read on —

"General Eisenhower in a declaration broadcast by the B B C tried to legalise the French partisans as a fighting force From responsible circles in the Wilhelms-trasse the following statement has been given out

"This attempt by the Allied High Command is unjustified French partisans revolt against the legal French Government and violate the French laws, which enforce capital punishment for such violations "

Now you are asked solemnly to adopt what the Germans said in a similar situation With what face could ever such an argument be presented to a British Court?

"The activities of the French partisans do not constitute regular war conduct"

(Precisely the kind of argument that is likely to be advanced)

"The activities of the partisans do not constitute a regular war conduct but a

malicious system of ambush fighting against the occupation power. Thus the partisans have forfeited the right to be treated as regular troops.

I submit that the view put forward by General Eisenhower is the more correct of the two. But the other view clearly shows what I have to establish before you in order to claim immunity, namely that it is a regular organised army fighting according to the laws of war and not guilty of any personal atrocity beyond and outside merely fighting a regular war and it is fortunate in this case, the first test of its kind because the issue is neat. There is not even a charge of any personal atrocity. My submission to the Court is that the British and I mean no empty compliment, civilised instinct has recognised that if a struggle for freedom is waged then if it reaches a stage at which there is an organised Government and an organised army it must be accorded all the rights, privileges and immunities of a fighting army and that is what I plead for.

The question which arises under Section 79 of the Indian Penal Code is that by all rules of civilised warfare what you claim for yourself you must accord to your opponents, even though you may have succeeded in defeating them. You are entitled to come to your own conclusion on the merits of the controversy at issue before you. But the Government says this:

'The policy of the Government of India is, however, that only these cases will be brought to trial where there are serious charges, apart from that of waging war against the King.

As I said, it is not law and in no manner binds you. I must frankly confess that much because it must not be said that I was trying to take refuge behind any executive statements. But the fact remains that behind that statement is almost a reluctant admission that waging war is in this case not an offence, or at least seriously treated as an offence. That is perfectly obvious, not because waging war *per se* is not an offence, but because in the circumstances of the case, where with an organised government and an organised army a war was carried on, then waging that kind of war is not an offence. I am not denying that if ten individuals in India collected arms and began to fight the Government of India, waging war is not or would not be an offence. But what is meant is that waging war meaning the prosecution of war in the circumstances of the case, namely, of the Indian National Army under the Provisional Government—that is not an offence. But it is a matter which I want to be judged entirely on the merits of the legal and factual submissions which I have made.

The next issue which really I submit does not arise but inasmuch as I have only one address before this Court I must try and anticipate things and answer them—sometimes it is unjust to one's self because one may raise more things than the opponent is likely to think of and I may make a present of an argument to him—but having regard to the rules of this Court I am obliged to resort to that course—it cannot be helped otherwise I should have preferred to have a short reply to any new point which may be raised by my learned friend on the other side. The short way to deal with the issue is this: the cases which I have cited and the authoritative works which I have quoted to the Court, clearly show that in judging this case no question of allegiance arises. All insurgents, while they are fighting are still held by allegiance and all the books which I have read will be worth nothing if the question of allegiance had been raised—because until you successfully throw it off the *prima facie* allegiance if I may so call it, exists and nonetheless while it is not successfully thrown off while it is in that ambulatory stage the rights of fighting and the rights of war. If it is a properly declared war and a properly conducted war (I will not repeat

that qualification again, you will assume it from me that when I talk of the rights of war, I am talking of a properly declared war and a properly prosecuted war as to which I have made my submission)—in such a case *ex hypothesi* the allegiance exists. The rebels want to throw off the foreign yoke, and the result is that undoubtedly if the question of allegiance arose or had ever arisen, no grant of immunity to insurgents fighting for liberty against the parent State would have ever arisen, but the fact remains that notwithstanding the fact of allegiance remaining, the right and freedom to liberate their own country being recognised at the same time, it is given effect to by recognising belligerency, that is to say, when an organised force is fighting under an organised government for its own freedom, while they have not completely succeeded and token allegiance remains, they are still entitled to fight. That is recognised by the law of nations. But should such a question ever be raised by my learned friend—which I submit is irrelevant—I have important submissions to make. First, that on the events which took place at Farrar Park on 17th February, there was no allegiance left and hence it is very important that I try to concentrate my attention on what occurred at that meeting.

The fact, which probably may remain unnoticed, but which was most important, was that the British officers and British other ranks were separated from Indian officers and Indian ranks. It is an extremely important fact to remember, in order to be able to appreciate the events and the occurrences of that day. They having been separated, the Indian officers and ranks, numbering anything between 30,000 to 45,000, were all asked to assemble at Farrar Park. Colonel Hunt made a short statement or speech, saying that he was handing them over on behalf of the British Government to the representative of the Japanese Government, Colonel Fujiwara. Colonel Fujiwara then made a speech in Japanese which, as the evidence now shows, was translated both in English and in Hindustani, and the statement of Col. Fujiwara amounted to this—using my own language—that those of the Indian prisoners of war who wanted to join in army for the purpose of liberation of their own country were free to do so, and handed them over to Captain Mohan Singh. Captain Mohan Singh then addressed them saying that he was prepared to organise the Indian National Army for the purpose of fighting for the liberation of India, and we had the evidence—uncontradicted—that he was acclaimed by the whole of the Indian prisoners of war present. I wish even at the risk of repetition to submit that when an insurgent fights against the then constituted government to free his own people and his own country from the alien, the question of allegiance does not arise. I want in that connection to take the statement of Captain Arshad—it is a most emphatic statement he made.

"We believed that the only allegiance we owe is allegiance to our country." I cannot describe better than in his words the result of that day's proceedings.

That brings me up to a somewhat difficult subject like the case of any subject people, in particular India. All of you are aware that every charge of treason in England is a charge of working against the King and the country. The last one is the reported case of John Amery. In the situation in which an Indian finds himself, the question is under what circumstances, and to what extent this question of allegiance can be raised at all, because once you divide the King from the country, it becomes a very difficult issue altogether for any human being to decide, and hence I would prefer to rest my argument on the occurrences of 17th February. The position of an Indian in a case of this kind is difficult and I am going to submit to the Court on first principles what its true solution is. Where the King and the country coincide there is no question of an alternative. If you fight against the King and also fight against the

interest of your own country, the question does not arise, but the question does arise where there is a fight for freedom, and I propose to read passages to show to what extent the world has progressed in the matter of the recognition of human rights. When you are nominally fighting against the King but really fighting to liberate the country then the point is whether the question of allegiance can arise at all. Unless you sell your own soul how can you ever say that when you are fighting to liberate your own country there is some other allegiance which prevents you from so doing. That means that if that happens there is nothing but permanent slavery.

Therefore it is that I submit that in the circumstances of this case a choice was presented by the force of circumstances to those prisoners of war who were surrendered by Britain—I do not say wrongly—because there are reverses in the fortunes of war. Who am I to say whether it is rightly or wrongly done? At the same time you cannot disregard this most important fact that for the time being by reason of the exigencies of the war Britain found itself unable to give any protection to her soldiers to fight for the country and that being so, they found themselves in a very unenviable position. My learned friend may say 'you ought to have remained prisoners of war and he may argue that they may do anything under the circumstances short of making war. I concede that proposition where allegiance to the King and country coincide, but where the two do not coincide, a different situation arises altogether. My learned friend may say that they were fighting on behalf of a puppet Government or they allowed themselves to be used as stooges of the Japanese. Even accepting this somewhat unenviable expression of stooges or otherwise, the question is one of fact, namely whether or not it was a regular army honestly believing that it is fighting for the freedom of its country. The question of a bad name that may be given has really no relevancy to the legal issue but inasmuch as a great deal of dirt has been thrown by expressions of this character—puppet Government and puppet army and words to that effect—and the question of the strength of that army may be raised, it is my duty to tell the Court how the evidence stands on record. The evidence that stands on record is that the No 1 I.N.A. was formed and was dissolved in December. I shall forget that for the purposes of this case, because waging war which is the subject of the argument applies to what you might call I.N.A. No 2. I have attempted to prove that I have established that the I.N.A. though small in numbers was fighting as allies of the Japanese Army and there is no ignominy in admitting that or in doing that because the objective at that time of both the armies was undoubtedly to free India from Britain. The objective was no more and no less than that of the allies in fighting to free France or Belgium or any other country and if in that process there was a unified command or a single strategy, you Sirs, will not say with your knowledge of military affairs that that makes one army the stooge of the other. It is a phrase with which my learned friend will not be able to walk away if he uses it and that is why I want to tie his legs if I can. If the British and the American armies fought under the command of General Eisenhower Britain may not be called the stooge of the Americans and I hope my learned friend will not descend to the level of calling the I.N.A. stooges of the Japanese. The evidence given by Lt. Nag is very important from this point of view. He was extremely prolific in the results and he came to prove at the instance of the Prosecution that there was a very organised regular army and that a big war was fought. My submission is that he was hoisted with his own petard. If he proved that a regular war was fought that is precisely my defence. He was qualified to speak about it. He was legal adviser of the I.N.A. and he told this Court in effect—I am quoting his words—that the two armies fought as Allies. Whether the alliance

was right or wrong is not before this Court. The only thing that is before this Court is whether or not this army fought as an organised army. My learned friend will not be able to support any allegation that they fought for any other objective except the liberation of India. If an allegation of that kind is made, it is a false allegation, and we have given a complete lie to it. The prosecution witnesses from beginning to end admitted that the object of the I N A was to fight for the liberation of India, and everyone, whether volunteer or non-volunteer, willing or unwilling, has admitted that they had no other objective except the liberation of their own country. That being so, my submission to the Court is that in so far as any allegation is made to the contrary it is only put forward as a point of prejudice, and I had to meet it with a view to remove the prejudice, because as I said it is not in human hands to choose your allies under the circumstances which may be forced upon you. And whether you fight with the aid of X, Y or Z for the purpose of liberation of your own country, the fact that Y was otherwise a bad person has got nothing to do with the case. But in all human discussions there is always an argument at a tangent, many human minds confuse the issue, and hence it is that I have attempted to cross-examine, at all events in the briefest possible way, to make this point clear. The point that I tried to bring out was that the I N A was, though small, a very organised army, inspired by the best of motives, and fought for that purpose, though unsuccessful for the time being.

There is one other thing which I ought to have mentioned and I regret I omitted it while I was talking on the first issue. That was with reference to the Minister sent by Japan to the Government of Azad Hind. I ought to have stated earlier, because the points which I have mentioned were proclamation, recognition, declaration of war, followed by possession of territory, and also the Minister of the Nippon Government accredited to this Government. The last is not essential, but still in point of fact it was alleged, and I will state how the facts stand under that head. The fact is that a Minister was sent in fact. No less a person than Mr Sawada of the Foreign Office told the Court that it was decided to send a Minister to the Provisional Government of Azad Hind, while he was the Vice-Foreign Minister and he was competent to speak about their decision that a Minister in fact was sent. As it happened he came without letters of credit or his credentials, and as if it mattered the whole argument was to show that a Minister ceases to exist because he did not bring the papers. Supposing one of you, Sirs, sent me your agent, and I choose not to demand from him his letter of authority and I accept him, it is a most extraordinary argument that the agent ceases to exist. That is a sort of logic which my learned friend wishes to apply to this case. But a good reason was given founded on diplomatic practice which you should accept. The evidence says that being a Provisional Government, in accordance with the dignity of nations, or comity of nations, no credentials are required. In other words, the important point is whether the man came and was recognized by the person for whom he was intended. During the evidence, my learned friend got an answer from one of the witnesses to the effect that the head of the State, Netaji Subhas Chandra Bose, did not receive him. But there is further evidence which really destroys any other points on this question. Thereafter credentials were asked for, the head of the State according to his conception required it, and you have the evidence that credentials were prepared and that they were signed by the Japanese Emperor and were despatched but under the then conditions of war they did not reach. But because the Japanese Minister was duly accredited I submit it is a reinforcing argument in my favour. When he came, the two Governments—meaning the Provisional Government of Azad Hind and the Japanese Government—took a different view of what you may call diplomatic practice, but that does not affect the issue. The sending Government in the end, when so required, actually sent letters of credit, and the fact that it reached or did not reach does not affect the issue, at all events it completely cured

such defect or deficiency as there was in the procedure. And in point of fact I ask the Court to hold that there was a duly appointed Minister which is all that arises here. The reason why we brought in the evidence was among other things that the Provisional Government of Azad Hind was a properly organized Government and accepted and the acceptance does not require necessarily the sending of an envoy or an ambassador or a Minister, or whatever the position or the relation between the Governments may be.

What is it that the I.N.A. embarked upon in collaboration with the Japanese? According to their agreement which I submit I have proved, any part of Indian territory which may be liberated would be immediately handed over to the I.N.A. If you as men of affairs, understand things rightly it is the only thing to do. Where is the question of being an instrument. If however there was any instrument, it was the Japanese because it is they who were assisting in liberating India with a view that the liberated parts of India would be handed back to the I.N.A. The facts of the case are that two proclamations were issued by the representatives of both the Governments—Gen. Kewabe on behalf of the Japanese Government and Mr. Subhas Chandra Bose on behalf of his Government. You may say nobody fights a philanthropic war. But whether or not it was philanthropic remains to be seen. I can well understand and I submit it for your consideration, that Japan as indeed one of the witnesses said, that the East would be better protected by a free India or that they might have better prospects of trade which is their only means of maintaining their standard of life, which incidentally is also the means of Britain. It was not a philanthropic war at all. So far as the freedom of India was concerned it was I submit the object of that war and you have it in evidence on oath before the Court. It may well be, I presume it was that a free India might better be able to assist by means of trade and otherwise to enable the Japanese to maintain their high standard of life. Therefore it is idle, unless people appreciate the true issue for them to say that unless you conquered territory there can be no other object in assisting in getting its freedom. It is that idle argument which I wish to meet before this Court. But we are not left to speculation. My learned friend cross-examined one of the witnesses. He said Oh yes you are assisting the Indian National Army with a view to attain your Japanese war aims, and he thought he had got away with it. But when we asked what were the war aims, then I am afraid all this cross-examination fell to the ground. He said it was with a view to assist war aims which was to free India. There may be many who doubt promises in this country but I am not one of them. I am one who looks on the brighter side of life and believes that if India could be freed in that way why honest men should not believe it. It is difficult to understand. The question before the Court shortly is this. What were the relations between the I.N.A. and the Japanese Army. That is the short point. It is a point of prejudice and yet it is my duty in defence of the honour of those whom I am defending and the group to which they belong that they were not the stooges of the Japanese as cheaply might be said by the opponents. That is the short history of the position of the I.N.A. vis-a-vis the Japanese Army.

I was speaking about the quality of allegiance, and I submitted to the Court that in a case of this kind where you have got to administer the law as a matter of justice, equity and good conscience, you may have a case where the country and the King do not coincide and where there is an imposed allegiance on a subject people, and I am not talking merely as a matter of theory. I am going to give you an instance of a case of this kind which has occurred in the days when the British Commonwealth was called the British Empire and the statement that I wish to read is the Declaration of Independence by the United States of America on the Declaration

of war and before they had attained any statehood, as it is called in the cases which I have given. I am reading from a book called "Speeches and Documents on Colonial Policy", edited by Keith and published by the Oxford University Press in London. It is at page 70. It says

"When in the course of human events, it becomes necessary for one people to dissolve the political bonds which have connected them with another, and to assume, among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitled them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness"—(and here I would like to point out that the recent pronouncement of Mr. Truman and of Mr. Churchill are to the same effect)—

"that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes, and accordingly all experience hath shown, that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But, when a long train of abuses and usurpations, pursuing invariably the same object, evinces a sign to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having, in direct object, the establishment of an absolute tyranny over these estates. To prove this, let facts be submitted to a candid world."

(Then they cite the grievances—I will not read them at all). Then the statement says:

"Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts made by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war,—in peace, friends. We, therefore, the representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare"—(and this is the point)—"That these United Colonies are, and of right ought to be, Free and Independent States,"—(and then comes the important sentence)—"That they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of

Great Britain is and ought to be, totally dissolved and that, as Free and Independent States they have full power to levy war conclude peace, contract alliances establish commerce, and to do all other acts and things which Independent States may of right do And for the support of this declaration with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes and our sacred honour

Here you have a case in which this quality of allegiance came to a test. They owed allegiance in the familiar sense to the King of England They owed allegiance to their own country and they realised that the time had arrived when the question became one of conflict between the allegiance to the King and the allegiance to the country So that in accepted history we have got a classical instance of a case where the choice between allegiance to the King and the allegiance to the country was presented to the world and men of honour chose allegiance to their own country to the imposed allegiance to a foreign king Therefore I venture to stand before this Court today with the most classical illustration the illustration of a race, of a country that has saved the world today and in the last war and did marvels in the cause of civilisation, and if that illustration is not going to be respected I submit justice would be denied completely I submit that what happened at Farrar Park, by reason of the actual state of events in this country was perfectly legitimate, and indeed legitimised by what I may call the course of history Indeed it is amazing how from the year 1776 to today the words are as true as they were then

We hold these truths to be self-evident that all men are created equal that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness

And I commend this to you Sirs in order that you in your wisdom will consider it just if ever any question arises This declaration took place on the 4th July 1776 and ultimately a war was fought, which resulted in 1781 in establishing what is today the United States of America as an independent republic of the world. I venture to submit this a historical instance, important in its character valuable as showing the way in which the world has functioned I want to call attention to the oath of allegiance to the Provisional Government of Azad Hind and its context for it is important that you should know it

'Indians in East Asia today are no more the subjects of an alien power they are the proud citizens of the Provisional Government of Azad Hind To bring this home to the mind of every Indian in Malaya and to rouse our community to a full realisation of the responsibilities of the new status it has been decided to ask each member of the Indian Independence League to take an oath of allegiance to the Provisional Government of Azad Hind Detailed directions regarding this have already been sent to all the State branches along with the form of the oath Each member, on taking the oath will be given oath of allegiance card and the Indian Independence League membership card he or she now holds will be taken back by the officer administering the oath and destroyed. The privilege of owing allegiance to our government will be extended only to members of the Indian Independence League as any Indian who is not a member of the League cannot be considered as a true Indian As Netaji said in his speech in Syonan on 25th October, we will not treat them as Indians or friends There is no place for them in India.'

What I wish to point out is that in so far as these documents are concerned they evince the same interest as was evinced by those who issued the Proclamation of Independence of the United States of America.

The next point to which I wish to call attention in this context is the law of treason with reference to India So far as India is concerned it is a loose expres-

sion. The whole of the law on this subject has been codified in the Indian Penal Code and I call attention to Chapter VI of the Indian Penal Code—Offences against the State. There you find codified what is the law of treason in other countries. Section 121 is waging or attempting to wage war against the Queen, 121A is conspiracy to commit offences punishable by 121, 122 is collecting arms; 123 is concealing with intent to facilitate design to wage war, 124 is assaulting Governor-General, etc., 124A is sedition, 125 is waging war against any Asiatic power in alliance with the Queen, 126 is committing depredation on territories of a power at peace with the Queen; and 127 is receiving property taken by war or depredation mentioned in Sections 125 and 126, 128 is public servant voluntarily allowing prisoner of State or war to escape, 129 refers to a public servant negligently suffering such prisoner to escape. These are the offences against the State.

My submission to the Court is this. In so far as the question of the law of treason is concerned in this country, my learned friend cannot talk of treason. For what would be called treason in the common law of England, my learned friend would have to look to the language of Chapter VI of the Indian Penal Code. In other words my submission to the Court is this—that generally speaking, apart from Section 121, my learned friend will not and has no right to resort to what he calls the principles of treason.

The next point to which I shall call attention is a classic book on the Law of England written in old English. I have got a transcript of it here. It is on page 95 —

When a nation has placed itself under the protection of another that is more powerful, or has even entered into subjection to it with a view to receiving its protection—if the latter does not effectually protect the other in case of need, it is manifest that, by failing in its engagements, it loses all the rights it had acquired by the convention, and that the other being disengaged from the obligation it had contracted, re-enters into the possession of all its rights, and recovers its independence or its liberty. It is to be observed that this takes place even in cases where the protector does not fail in his engagements through a want of good faith but merely through inability. For the weaker nation having submitted only for the sake of obtaining protection—if the other proves unable to fulfil that essential condition, the compact is dissolved—the weaker resumes its right, and may, if it thinks proper, have recourse to a more effectual protection. Thus the Dukes of Austria, who had acquired a right of protection and in some sort a sovereignty over the City of Lucerne, being unwilling or unable to protect it effectually, that city concluded an alliance with the three first cantons, and the Dukes having carried their complaint to the Emperor, the inhabitants of Lucerne replied “that they had used the natural right common to all men by which everyone is permitted to endeavour to procure his own safety when he is abandoned by those who are obliged to grant him assistance”

This is the law which has been enunciated and accepted in England ever since. This was in 1797.

My submission is that the insurgents are in the position of rebels up to a stage, but a stage is reached where if the State has an organised army it becomes possessed of the right of belligerency, even though they may ultimately fail. The question of allegiance does not arise then, but I would not be surprised if with a view to divert the discussion into a wrong channel any such statement is made.

Before I go further, I wish to make quite clear a point about the prisoners of war. The prisoners of war may submit even to the extent of assisting the enemy—that is passive assistance up to the point of labour. You will find in the same books that they may not actually join the enemy and in this connection I wish to submit

to the Court what was the relation of the I.N.A. to the Japanese. You belong to the profession of arms and will appreciate what I am submitting to you. I have stated the position as much against myself as possible. I am now assuming that the events which took place at Farrar Park did not take place. I am assuming against myself that they were just prisoners of war. The question still remains what is it that they did. The question arises whether they ever allowed themselves to be used as what I might call tools of the enemy or any other instruments, whatever the phrase used. Having been surrendered as prisoners of war if the Japanese chose to leave the Indians to secure their liberty—I am willing to agree that it suited them—that by itself does not bring the I.N.A. and the accused before us within the prohibition imposed upon the prisoners of war. It is a point that I wish to elaborate up to a stage. I wish to state that there is no obligation whatever which prevents a person who is a prisoner of war from fighting on his own for the liberty of his own country. I submit that my learned friend will not be able to controvert that, and therefore I wish to make it quite plain that the question of the relation between the Japanese Army and the I.N.A., the question of the objective of the Japanese as regards India—these points have got to be re-emphasized before this Court. Unless they are borne in mind, the Court may easily go into a wrong track.

The point is this. I quite agree that the Court or any member of it may say 'They were fools in believing the Japanese. That has nothing to do with the case. Other men may have been wiser. The question is whether those who formed the I N A did believe in a *bona fide* manner that they would be able to secure the freedom of the country. If they *bona fide* believed it, the fact that there are wiser men on earth does not alter the issue so far as the renouncement of the guilt of that army fighting for the liberation of India is concerned. Hence it is that I wish to submit that the evidence which I submitted yesterday and a few more passages to which I wish to call attention today is relevant for that purpose. You have it in evidence and it is a matter again in which the question is of one's own belief. The question is not whether that belief was something which probably the Court or any member of it may think was of very credulous people. That has nothing to do with the point. You have it definitely in evidence before this Court in the evidence of prosecution witnesses that if any nation or any race or any class came into being to oppose the independence of India, they were prepared to fight that including the Japanese. That is why I was very anxious to point out that it is only when a story is completely pieced up and comes before the Court that its significance can be appreciated. The whole point of it is that the question is not so much as to whether you or I or anybody else would have relied upon it as a promise. From that point of view probably we are a credulous race. We have relied on many promises of others and of Japanese also. But that has nothing to do with the point. The point is that if these people honestly believed as I say they did that they were securing the independence of India then the question of what a prisoner of war cannot do, does not actually arise and will not arise.

In this connection I would like to read the evidence of Nag. The question that I put to him was: Do you remember ever attending a meeting in Singapore at which Capt. Mohan Singh told the prisoners of war that if need be they would fight the Japanese in addition to the British? He said he would fight anybody who stood in his way even if it were the Japanese or anybody else. The next is P W 9 Havildar Sucha Singh, and this is the passage to which I wish to refer. He said that the I N A has already been started in Singapore and a good many people had joined it and the I N A will only fight for the freedom of India and for no other cause. If we go to India and the Japanese go with us we are equipped with arms and we will fight the Japanese if they turn round against us. This is a

golden chance for us and we may not get such a chance again." The next witness is P. W. 18. He said: "After I was posted to Bose Brigade, Captain Shah Nawaz Khan delivered a lecture which I heard. He said that the Bose Brigade which was formed was to go first of all to the front, and this Brigade is composed of picked officers and men." And then the passage goes on: "He also said that if and when we fight with our allies the Japanese nation, it should not happen that we remain as second rate in the fight and thus disgrace our nation. When we reach India we shall meet Indian men and women, and those who are elders to us we should consider them as mothers and those who are younger we should consider them as our daughters and sisters, and if anybody will not obey these instructions he will be shot dead; and if and when India is freed and the Japanese who are now helping us tried to subdue us, we shall even fight them. He also said that even now if a Japanese gives you one slap, you should give him three in return, because our Government is parallel to their Japanese Government, and we are in no way subservient to them, and that when we reach India, if we notice any Japanese maltreating an Indian lady he should be first warned by word of mouth not to do so, but if he continued to do so, we were at liberty to use force and even shoot him in order to prevent it, because the fight which we are making now is for the freedom and well-being of India and not for the benefit of the Japanese. This lecture was delivered in Taiping." Then, I come to P. W. 19. He said: "I was aware of the declaration of the Provisional Government of Free India. Prior to my joining the I. N. A., I was in a prisoner of war camp." Then I come to the other passage which is relevant for the purpose: "I knew after joining the army that the sole ambition of the I. N. A. was to fight for the freedom of India against any army in the world, but my own idea was not to fight but escape. By 'any army in the world' is meant also the Japanese." Then I come to P. W. 24. He said: "In August 1943 I was in Neesoon Camp. Captain Shah Nawaz came to address the Heavy Gun Battalion there. He said that the I. N. A. had been formed for the liberation of India and it would fight not only British Imperialism but also those would put obstacles in the way of India's freedom or any other party which wished to subjugate India."

I had hitherto avoided reading any evidence because there was no substantial contest as to the facts which have been proved. The record of evidence clearly shows that in so far as the I. N. A. was concerned, they acted on their own. No doubt, they accepted the alliance with Japan on promises which they, at all events, honestly and sincerely believed, and if they believed them, I submit there can be no question of any obligation. There are so many matters which have been gone into and which in patience we suffered in the belief that there was no relevancy to the charges before the Court. But now that they are before the Court, I must separate them as best as I can and, while separating them, give answer to every single suggestion that was made or is likely to be made. Hence it is that I am here before the Court to point out that in doing what the I. N. A. did, there was no question of any breach of any obligation or the prisoner of war obligations or duties, remembering the extreme obligation, which, I submit, I have stated as strongly against myself as it is possible to do.

The next point to which I wish to call attention is this. In addition, there is the evidence of the last witness, P. W. 12, and that sets out more or less fully the point of view of those who honestly believed in doing what they did. I am not saying that the Court is not called upon to examine the matter in its own light. At the same time, the Court has got to see not so much what any individual member might have done as that whether you believe what they said before this Court and that was their object.

This witness said: "My reasons for joining I.N.A. were many. I admit that

it was a difficult question to decide whether I should join the I.N.A. or not, because there were many factors which I had to consider. It was a momentous decision. Uptil that time I was not greatly interested in politics or the political welfare of India because I was educated that way and moreover when I joined the Indian Army in 1936 I felt that politics was not encouraged in the Indian Army and hence I stayed away but when the question of I.N.A. arose and we had to decide whether we should join it or not I had to think deep, but it was such a big question that I could not make a decision myself.

The reason why I am reading this to the Court is this. He was a witness of truth and the very fact that they had a conflict in their minds is illustrative of the extreme *bonafides* of the men who chose to take the course which they did. Hence it is that I shall read a few more lines of that evidence: 'I remember sometime in the beginning of July 1942 when we were being asked whether we were going to volunteer for the I.N.A. or not, I was staying at Mount Pleasant Singapore, where Capt Mohan Singh had his Headquarters. I know Capt Sahgal for the last 12 or 13 years: we were in College together and we were friends there. I felt that if I had a discussion with him along with a few other officers, we may come to some decision regarding volunteering for the I N A. So in the beginning of July, he and two or three other officers came to my bungalow at Mount Pleasant and we went through this question of joining the I.N.A. We discussed all the pros and cons. We unanimously decided that under the circumstances we all owed our allegiance to our country.

'We also felt and agreed upon that so far concerning our career in the Indian Army there had been distinctions between the British Officers and the Indian Commissioned Officers. The Indian Commissioned Officers had not been treated as well as our English comrades or brother officers. We also felt that if the senior officers present in Singapore or in Malaya did not join the I.N.A. it was quite possible that the Japanese would exploit the Indian prisoners of war because then the Indian prisoners of war would be split up into small groups. Some people would join and some would not, and the Japanese would take advantage of that and enrol people from amongst the prisoners of war who would be willing to do any service for them. We felt that that would be a disgrace to Indians. We agreed that if the senior officers joined the I.N.A. and formed a strong party and organised the I.N.A. as a regular army and fought the Japanese on every point regarding the army we would have a far stronger position with the Japanese than otherwise. We also felt that if we created an army of our own we may be able to establish a certain amount of standing with the Japanese, and by doing that we may be able to stop the Japanese from committing any atrocities on the Indians in Malaya. We had seen what the Japanese were doing to the Chinese and Anglo-Indians and the Malayans. They were not treating them very well. Certain atrocities had been committed on the Chinese and also on the Eurasian community and we thought that if the Indians refused to join the I N A, it was quite possible that the whole of the Indian community in Singapore or in Malaya might suffer. So we had a discussion on all these points. But then arose the question that if we did join the Indian National Army, what would be the reaction of our people in India?

My suggestion to the Court is this that, apart from the process, the thought which the last witness brought to bear upon it and the discussions which he had with other people, clearly show that they did not take the steps either dishonestly or hastily. They took this step after taking into account the whole of the situation in existence at that time, and the future as they saw it.

And if that is the condition in which they did it, I ask the Court to hold that they honestly believed in the propriety of the step they took and the justice of the cause for which they took it. And hence it is that I wish to point out to the Court that it was not a case, as the text-books say, of a prisoner of war joining the enemy in order to fight his battle. That, I quite agree, according to the text-books, he may not do. But where a prisoner of war already released, as I have told you earlier, finds himself in the situation in which he did and then fights for himself and for his own country, being prepared to fight against the Japanese themselves if they ever became untrue to them, in such circumstances, I submit, there was no question and there could be no question of the Indian National Army being guilty and of those who joined that army being guilty of any act which may be regarded as contrary even to what you may call the code of duties imposed upon a prisoner of war. I have already submitted and at the risk of repetition I will say, that it is entirely irrelevant and there is no such thing as a charge against these men before you of a breach of duty as prisoners of war. In fact there is no such charge in the Indian Penal Code, so far as I can see. There may be a charge under the Indian Army Act but no such charge is at present before you. There is not even a charge of desertion and indeed there cannot be, for when the prisoners of war were surrendered there was no occasion for desertion. So let us not be carried away by what you may call the popular language of desertion, breach of duty and all the rest of it. Let us concentrate, and I ask the Court so to do, on the charge on which the accused are on trial before the Court, and on that only. The rest is a matter of prejudice, and if one has a complete answer even on a matter of prejudice, it is a matter of satisfaction. It is a matter which I understand—and I appreciate—that tribunals of this kind are likely to take account of, namely, that general *bonafide*, honesty and integrity all goes to the credit of individuals who are on trial as so much in their favour.

Then, Sirs, there is one piece of evidence in so far as this particular matter is concerned, a piece of evidence of extreme importance, and that is how the first I. N. A. broke up. As to how it broke up you have evidence before the Court and it is unanimous as to the reasons for which that event occurred. Rash Behari Bose was for many years in Japan and he was too easily inclined—to put it most mildly—to believe in the Japanese. Mohan Singh on the other hand was very cautious. Mohan Singh in fact has himself evinced by his conduct that should anything happen to him, that is to say, if he is arrested or removed, the army should be dissolved. And the real reason is this, that while on the one hand Mohan Singh was anxious that there should be an army formed for the liberation of India, at the same time he was equally anxious that the army should not serve as a mere instrument of Japan. And it is because he had his suspicions, is because—of the Resolutions in the Bangkok Conference with regard to making clear the aims of the Japanese for the purpose of fighting the war so far as India was concerned—that Mohan Singh began to lose faith in the promises of the Japanese. And as soon as the Japanese realised that through the agency of Rash Behari Bose—and you have picturesque evidence here—Rash Behari Bose came along, collected all the senior officers and declared that Mohan Singh had been removed. I could not quite appreciate, with all the thought that I devoted to it, the point that my learned friend made or attempted to make as to whether he was actually removed by Rash Behari Bose or by the Japanese. For my own part I do not mind the suggestion that my learned friend made that the Japanese arrested him. That is precisely the point, that the first I. N. A. was at a stage at which there was a trial of strength between those Indian nationals who were members of the I. N. A. and the Japanese. Later on when the Japanese realised that the Indian National Army and those who were likely or wanting to join it were not prepared to become tools in their hands, that there was

a break and hence when you come to the second I N A, when Subhas Chandra Bose took command of the Indian National Army, the second time you find an association between the two armies—may be very unwilling on the part of the Japanese. Very often one has to make a choice when one finds a strong man on the other side, and hence it is that I wish to insist before this Court that throughout the dealings between the I N A and the Head of the Provisional Government of Free India at this time, the position taken up by them was not of an instrument of the Japanese, but a body formed with the object of liberating themselves, no doubt getting all the assistance that they could from the Japanese as an allied army. And that, I submit is the key to the *bonafide* of the belief of every individual man who at all events thinkingly—if I may use that expression—joined the I N A. I dare say it often happens in the world that once you find a thinking and leading man taking a course, other people *bonafide* believe it to be the true course and join it. Therefore I submit there is ample evidence on record evidence emanating from witnesses which in ordinary courts and tribunals is the best to be relied upon by the defence, evidence from prosecution witnesses, not all willingly given, that they fought their own ground, they fought their own cause, and therefore there was no question whatsoever of their breaking any duties which they owed as prisoners of war. But you have to remember all the time and again and again that there is no such charge in the trial before you. There are only two charges before you which I need not repeat. But I want to be quite careful because it will be my duty to deal with the material lest it might be suggested that I did not deal with it, and I wish to point out its relevancy and its significance to the extent to which these points bear on the conduct of the men on trial before you. I have no desire to shirk an inquiry in fact I am here as far as I can—apart from any questions of private opinions on political issues—to impress upon you the truth, integrity and sincerity of men which after all is a bigger asset sometimes than the legal technical issue. There is also the evidence of Lt-Col Loganadan D W 7 with reference to the question and I am obliged to refer to it particularly because of the pamphlet called *Our Struggle* which was placed before you. There is just one point which I must make before I read the evidence, that all that is proved is that the pamphlet was issued. But I hope and trust that my learned friend will not suggest that the mere fact that a pamphlet is issued that by itself proves the truth of the statements made therein. Let me therefore begin by saying that I am not obliged to explain why Rash Behari Bose said what he did. It will be an error on the part of the Court to say that because Rash Behari Bose said something about Mohan Singh, therefore it is true. At the same time I wish to call attention to this evidence with a view to pointing out the terms on which Mohan Singh and Rash Behari Bose stood with a view to point out that any allegations emanating from the disappointed Rash Behari Bose at that time are not to be taken as words of truth. Secondly, in any case an allegation made by A against B, neither of whom has appeared in Court as a witness, is no proof of the allegation made by him.

With this observation I now call attention to the evidence of D W 7 (Lt-Col. Loganadan)

'I know Captain Mohan Singh. When I joined the Indian National Army he was G O C. The relations between Captain Mohan Singh and Rash Behari Bose were not very happy. Of my own personal knowledge I know that Rash Behari Bose having lived so long with the Japanese, was inclined to be guided and controlled by them. Whereas Mohan Singh said he felt that the Japanese should be dealt with a firmer hand than what Rash Behari would be able to do.

I then come to D W 12 (Captain Arshad). The passage to which I call attention is this —

“ I was in the first Indian National Army Headquarters, then as General Staff Officer in ‘G’ Branch. The first I N A was dissolved in December 1942. The I N A had been raised after the Bangkok resolutions were forwarded for ratification to the Japanese Government. The Bangkok resolutions were the result of a Conference held in Bangkok in June. There were many resolutions in that and they were passed by the Conference and then sent to the Japanese Government for ratification, and we hoped that the ratification would come quickly, but as the days went by, Captain Mohan Singh, who was then G O C of the Indian National Army, felt that the Japanese were delaying the ratification of the Bangkok resolutions and he asked the Japanese liaison body which was attached to us, called the Iwakuru Kikan to expedite the ratification of the resolutions. They were not very clear in their replies. They tried to delay them as much as possible. I was present. Captain Mohan Singh kept his Headquarters informed of all the correspondence and the arguments which he was having with the Japanese. Captain Mohan Singh told us his doubts of the intentions of the Japanese. He said that he noticed that the Japanese were not playing the game, and he said that if the Japanese continued with that attitude of theirs he would dissolve the Indian National Army, and we all agreed with him because we felt that unless and until there was a clear understanding between the I N A and the Japanese we would not continue the Indian National Army. Besides that, there was another main point of dissension between the Japanese and Captain Mohan Singh. At the Farrar Park meeting the Japanese had handed over all the Indian prisoners of war to Captain Mohan Singh. Until that time the members of the I N A as well as those prisoners of war who had not joined the I N A were under the command of Captain Mohan Singh. But in December the Japanese wanted to take those people away from Captain Mohan Singh who had not joined the I N A. Captain Mohan Singh felt that the Japanese were not keeping to their word and he refused to part with the prisoners of war. These main reasons as well as the other minor reasons forced us to dissolve the I N A.

And, Sir, the Bangkok Resolution No. 13 which is referred to, reads thus

“(13) Resolved that the Indian National Army shall be made use of only

(a) For operations against the British or other foreign powers in India

(b) For the purpose of securing and safeguarding Indian National Independence, and

(c) For such other purpose as may assist the achievement of the object, viz, Indian Independence”

Lt Nag (P W 1) refers to the same subject in these terms

“Capt Mohan Singh left written instructions that if he was arrested, the I N A should be dissolved. ‘In the event of my arrest the I N A will be dissolved and all the I N A badges of rank and records will be destroyed.’ There was a general feeling from the beginning that the I N A should not be subordinated to the Japanese and that we would not allow it to be subordinated to the Japanese. There was no question of dissolving it at any time during those days. The predominant motive was to free India for the sake of Indians.

“After the 2nd I N A was formed the same feeling was there, until Subhas Chandra Bose arrived in July 1943. After that everybody thought that they had got a leader who could guide them on proper lines without being subordinated to the Japanese. Thereafter the two armies fought as Allies, i.e., the Indian National Army and, the Japanese”

This, Sir, is the evidence which has been placed before this Court. As I said my submission before the Court is that it was when the I.N.A., which was formed on the second occasion, felt confident that they would not be subordinated to the Japanese that they really fought as Allies. And hence it is that I submit to the Court that in so far as relations between the I.N.A. and the Japanese Army were concerned, it has been established by evidence that they were of the character which I claim for them, namely as allies. So far as the I.N.A. was concerned it was actuated by only one motive and one business, and that was to secure the freedom of India. That is the issue, which as I have said, does not actually arise, but was bearing on the integrity of purpose of those who are on trial as members of the Indian National Army.

Then the next point to which I wish to call attention is the evidence before the Court that the Indian National Army was completely officered by Indian officers. True, an attempt was made by my learned friend in cross-examination as to the question of the High Command. I do not deny for a moment, though I do not understand or profess to understand very much the organisation of armies when they fight together for apparently the same purpose in any case, but knowing what you do about the last but one war and the last war, when any question arises of unified command it serves very little purpose to suggest that in so far as the higher strategy is concerned, it was no doubt in the hands of the Japanese. No doubt probably they claimed at all events that they understood the art of war better, and that after all the Indian National Army consisted of men of not that standing. But apart from accepting better judgment on what should be the proper strategy when it came to a question of internal administration of the I.N.A., it has been amply proved before the Court that the I.N.A. was entirely independent in its composition, including every officer. The evidence of Lt. Nag is in these terms:

'The whole of the Indian National Army was trained by Indian Officers and not by the Japanese. It was entirely and throughout officered by Indian officers and not by Japanese officers.'

The colours of the Indian National Army were the Indian National Congress colours, i.e. saffron, white and green. Their badges were distinct from the Japanese badge.

And then he answered other questions which are immaterial namely, that among the colours in the middle of one of the badges there was a brown star and it was resented by the personnel of the I.N.A. as it might be mistaken for the Rising Sun.

P. W. 19 gave the following evidence:

'So far as I am concerned, I took instructions from our own Indian officers only and not from the Japanese. As far as I am aware, there were no Japanese in command in our area or otherwise in the I.N.A. I was Assistant to Lt. Abdur Rehman who was left in charge of the rations at Falam. There was a long carry of 48 miles for rations. The rations consisted of rice, salt, oil and sugar. Sugar was very scarce. The rations were very short consisting of rice, salt and a little oil. The Indian National Army was fighting under great hardship on that front. Whilst I was in the I.N.A., I carried out my duties faithfully.'

The next point which I wish to make is that apart from what your may call the general higher strategy, the Indian National Army was completely independent. And though I am not anticipating a point which it will be my duty to argue namely, whether or not the question arose that people joined the I.N.A. because they might be worse off as prisoners of war, the less said about it the better. The evidence clearly shows that the only ration that the

I.N.A. had, apart from sugar and oil which was nominal, was rice, and that was the luxury which attracted men to the I N A. My learned friend will consider twice over before trying any such argument. The question really is that one set of men believed in a cause and the other set of men either from supineness or otherwise did not, and nobody ever gave thought to the question as to whether one would be better off or not. One thing is quite certain that apart from what actually happened by the conduct of the Japanese, those who joined the I.N.A. were certainly facing the possibilities which every soldier has to face, unless he wishes to avoid it, which prisoners of war could, namely, fighting with the opponent army. And, therefore, my submission to the Court is that this idea of contrasting the comforts of the I N A and the comforts of the prisoners of war under the Japanese, is entirely overdone. It is entirely a question as to what points of view appealed to one or the other sets of men, and therefore, Sir, my submission is that in so far as that is concerned, we have now been able to place before the Court the actual evidence on the question.

The next point is that the I N A was a purely voluntary army, and notwithstanding the attempt made, the Prosecution entirely failed to prove that it was not voluntary, because from time to time it has been proved before this Court by the speeches made by the accused and Sri Subhas Chandra Bose, which indicate that at every stage opportunity was given to every member of the I N A. to withdraw if he chose to do so. But the strongest evidence is this. It is common ground, apart from actual principles which have not been accurately proved, that only a portion of the volunteers could be armed, equipped and trained, because of the paucity of material, and that there was a large number of people who could not be trained and could not be armed for want of resources,—what is called the surplus volunteers. But I put it to you, Sir, as men of commonsense that it would require very much effort on the part of my learned friend to say that when they had more than enough men already, that they coerced more people to join the I N A. Or, in the language of Lord Shaw, I think it is a statement that stultifies itself because it is stated that 'we have enough men and we cannot arm them,' and yet it is alleged that you go on coercing people to join. I think it is a folly of which no decent human being would be guilty if he had a grain of commonsense. What has actually happened is that people have been punished for crimes of their own, and in order to appear glorious before this Court, they attributed it to pressure by the I N.A. It is a very clever half-truth, which is not uncommon.

You get a fact which occurred. Then in order to appear virtuous he would say that he was punished to be coerced to join the I N A. A more ludicrous story could not have been presented to the Court, because in one case the witness admitted the reason why that took place. They were sent to the Detention Camp. Having been sent there, they were asked to surrender their ringleaders. When they did not, ten people came and there was a free fight—300 on one side and 10 on the other. And for the Government to put forward this sort of half-backed story in order that the Court may swallow it passes one's understanding.

This is Lt Nag. "I heard Subhas Chandra Bose state at a meeting held soon after the meeting of the 21st October, 1943, that anyone who wished to leave the I.N.A. was permitted to do so."

P.W. 5. "Prior to my arrival at Port Dixon in Kuala Lumpur—at that time I was in the custody of the Japanese—the bad conditions were due to the Japanese. In January-February 1943, I saw Capt Shah Nawaz for the first time when he came to collect volunteers. I am quite clear that Capt Shah Nawaz Khan left it open to everybody to join the I.N.A. or not as they chose. I remember that he

wanted staunch men who were prepared to lay down their lives for the freedom of India. I never saw Capt. Shah Nawaz after that lecture

P W 24 "I reached Poba on the 25th or 26th February Col. Sahgal said at Poba that those who did not wish to stay in the I.N.A. and wished to go over to the enemy should tell him today. He will then make arrangements to send them in one party to the enemy, but they will not be permitted to take any arms or papers with them. I do not want that men should desert in dribblets. As far as I understand it was Sahgal's intention that after the party went over men should not go over in dribblets and so cause demoralisation.

D W 6 "The recruitment was absolutely voluntary. We had surplus volunteers whom we could not train or arm.

D W 7 "The Indian National Army was purely voluntary. As far as I am aware no coercive methods were used in recruiting. I am aware as a member of the Provisional Government that we declared war on Britain and America.

Then Sir, there is one more statement referring to Lt. Dhillon, to which I wish to call attention. My submission to the Court is that in so far as the accused before the Court are concerned they by their open speeches gave everybody to understand that it was entirely their own choice whether to join the I.N.A. or not.

That brings me next to the evidence about the alleged coercion for the purpose of compelling men or inducing men to join the I.N.A. The position Sir, is this with reference to that. At the time when the question arose as to the admissibility of the evidence, it was candidly stated by the Advocate-General that he did not rely on Sec. 10 but the way in which it is sought to make it relevant is this. He said that the accused did not participate in it, did not do it, did not encourage it. But that they knew about it.

The matter did not rest there. When they asked other people to join the I.N.A., they gave a veiled threat. Remember if you do not join, what hardships exist. And the matter was further strained before this Court by saying—meaning thereby among other things—that there would be personal coercion. It was on that statement that this honourable Court was pleased to admit the evidence. The attempt was made to show that the accused made this veiled suggestion. That attempt has completely failed because Capt. Dhargalkar who was called to give evidence in support of this, fell through. I shall read that part of his evidence to show that he completely collapsed in what he came to prove. He came to prove that the three accused or some of them went with the other officers. He came to support what the Advocate-General was instructed to put forward namely that he was given the alleged veiled threat. When we came to cross-examine Capt. Dhargalkar he said 'I was never asked by anybody. I was never addressed by anybody' and the more significant thing is he ended by saying 'I cannot state to the Court who said what to anyone. The net result of his evidence amounts to this that the Government having undertaken to this Court to prove that the veiled threat was given in that form and that meant evidence possibly relevant in the eyes of the court, the evidence was allowed to be given. But in the light of the evidence of Capt. Dhargalkar, there is none in which any allegation of veiled threat exists. I therefore ask the Court to hold that evidence as completely irrelevant because it was admitted on this provisional promise, namely that it would be proved that there was a veiled threat given by the accused, because there is no other way in which it could be made relevant. There is no charge against the accused of any personal cruelty of any kind. There was no charge that they encouraged it and the mere fact that they had knowledge would not be anything—even that, they have failed to prove. When I pointed out that mere knowledge was not enough, my

learned friend added a further point, which I presume induced the Court to allow that and that is when they used the words which they are alleged to have used—"If you do not join remember the hardships"—meaning thereby that inasmuch as they knew that wrong methods were being adopted, they threatened the men by saying wrong methods would be adopted in their case. That I submit is the only process of reasoning by which he attempted to make his evidence relevant. My learned friend has completely failed to establish either the knowledge or alleged threat and for these reasons, Sirs, I submit that this evidence should not be excluded, and I have prepared a petition so that it may remain on record for my submission.

The learned Judge-Advocate told the Court on the occasion of the question of admission of the evidence

The learned Advocate-General really bases his case on the speeches of the accused which he will prove showing, as he says, that the accused referred to the hardships which would be inflicted on prisoners of war unless they joined, and thereby implying that they had knowledge of the methods by which he alleges that recruiting for the I N A was being carried on.

At the same time, now we have arrived at a stage when I respectfully ask that the Court should rule that that evidence should be entirely disregarded, because there is no proof of the promise on which that evidence was submitted. That is the formal application I make to the Court.

Judge Advocate Do you mean that you are asking us to make a decision on this now?

Counsel for Defence On this point.

Judge Advocate I am afraid it is not at all the procedure to make piecemeal decision on parts of the case, without hearing the learned Advocate-General and without hearing me. That decision will be made in due course, but I must ask the Court that they should go on now without making any piecemeal decision at this present stage.

Sri Desai I shall leave it at that. I thought that I would save the Court, and perhaps incidentally myself, the necessity of having to go through that evidence, to show how utterly useless it is. But that being the view of the Court, I will not pursue it.

That brings me to the next question. My submission is that the basis on which that evidence was admitted has completely disappeared; and inasmuch as it has disappeared it should not be taken into consideration in this case at all.

The only reason why I thought it my duty to call the attention of the Court at this stage was that you might have to go through the evidence and think if it is relevant.

The first witness, to whose evidence I think it necessary to call the attention of the Court, is Capt Dhargalkar. This is what Captain Dhargalkar said in his examination in chief.

"I do not remember Lt Dhillon being there, but I remember Capt Shah Nawaz Khan and Capt Sahgal coming there. I recognise both these officers as accused before the Court. Neither of the two accused ever spoke to me, but discussions usually took place and nearly all the discussions were concerned with our joining the I N A. I was present at these discussions. It is very difficult for me to quote the exact word which Capt Sahgal and Capt Shah Nawaz Khan said, but the gist of the thing was 'Why don't you all join the I N A, rather than waste yourselves living under these conditions'."

That is really the whole point. Let me examine whether the promise is fulfilled even in the examination in-chief. If 'conditions' merely meant conditions as prisoners of war whether for the time being under the I.N.A. or the Japanese that is not a matter of charging the accused. But I suppose my learned friend will use the word 'conditions' to mean almost anything meaning thereby that "some people did something to somebody else and that will be your condition." I submit it does not carry the matter far enough.

I would then call attention to the cross-examination of this witness. He says,

"I saw all the three accused on several occasions. I saw them anything between 20 to 50 times. I only spoke to Capt. Sahgal a couple of times; I do not remember having spoken to Capt. Shah Nawaz Khan or Lt. Dhillon. I spoke to Capt. Sahgal in Col Bhonsle's house. I cannot remember any other occasion. I was present at fifteen occasions at which discussions took place. Capt. Shah Nawaz may have been present about twice and Capt. Sahgal was present about the same number of times. This was in a Separation Camp at Bidadari. There was one huge camp at Bidadari and also a Separation Camp. I was in the Separation Camp. The whole of the Bidadari Camp was the Indian National Army Camp. We were taken there by Capt. Mohan Singh. There were about sixteen of us living in the room. I did not take part in the discussion nor was I addressed by Capt. Shah Nawaz or Capt. Sahgal. That is all that happened during the discussion."

Then he goes on to say

Capt. Shah Nawaz Khan came there, but I do not know whether he came to see Capt. Sher Dil Khan. I was not invited to a discussion, I was living in the room and I overheard certain conversations. I cannot remember the words of these discussions accurately but I remember the gist of them. The gist of the conversation included many other subjects other than the Indian National Army. I was addressed but not by any of the officers present there. Capt. Shah Nawaz Khan was speaking to 16 other people. The gist of his conversation was "Why do you not join the Indian National Army?" I remember that occasion to the best of my knowledge. It may have been any time in that month. I cannot remember all that he said. I cannot say exactly what he said.

(You will see, Sirs, a change in the gist. There was no question of what consequences would follow.)

"I cannot remember exactly what he said. I cannot single out from the others what Capt. Shah Nawaz Khan said. My answer is the same with regard to Capt. Sahgal. What I told the Court is the general impression without knowing who said what."

This is the evidence of Capt. Dhargalkar and I respectfully and emphatically submit to the Court that the promise on which that evidence was admitted remains unfulfilled and inasmuch as it remains unfulfilled, my submission is that the evidence should be disregarded completely.

Now with that submission and in view of the record it is my duty very briefly to examine the evidence which has actually been given and I will preface the examination with this remark. This is a case where in some instances what is called a half truth implies an untruth e.g. there was a Detention Camp where people were taken if they were guilty of acts of insubordination or any other act contrary to the discipline of an army. Having been taken there there was no doubt a certain amount of tasks and fatigues they were asked to do. That is perfectly true, but that having been done the man wants to make a martyrdom of it. I will tell you why. He says he was taken there and he was asked to join the I.N.A. It is all, I submit, embroidery of the case, and I will ask the Court to

examine that evidence in that light, and in one or two instances I shall be able to show that reluctantly he almost admitted the case I put to him, that he was sent there because he was guilty of insubordination. People very picturesquely said they were asked to pick up one end of a pole and every time a man followed them or hit them—I think the very exaggeration defeated its own purpose. I do not think any Court will believe such an absurd story. True, he was taken there, and no doubt he had to do a certain amount of fatigue. No doubt it may be that a non-commissioned officer thought it was below his dignity to pick up things which were necessary. In fact you might remember with what amount of reluctance the witnesses gave the kind of evidence before the Court—I would recall a picture of one of the witnesses when I told him that this was only for the purposes of manure and there was the evidence of a garden—it almost taxed one's patience to be able to get out of him that evidence, and get him to admit those facts, and even then he kept on saying "Oh, there was a road there and in between there was something and if you call it a garden it is wrong and so on". The fact remains that the witness was taken there for some act of insubordination, he was put to a certain amount of task, but then in order to glorify himself as a martyr, he now comes forward before this Court and says "I was taken there because I did not join the I N A". And when I cross-examined him as to what particular position he held with particular distinction, and what distinguished career he had, he ultimately collapses and admits he was an ordinary soldier. To think therefore that stories of this kind would pass muster before a Court composed of men of affairs and experience, I submit, will not do.

I call attention first to Wolit Bahadur, P W 14. The kind of picture he gave—this method of carrying baskets at the end of a pole—I do not suppose it is any great innovation or torture, unknown in India. The way in which he described it, and if he was not giving evidence before men of experience in this country, was almost insulting to one's intelligence. After all it is a common method of carrying a load on bars with a man at each end, and if he objects to carrying a load like that I am very sorry for him but I am afraid he has to labour, and if he has to work, he has to work, and the more we learn to do manual labour, I think, the better for men of my country.

And then he said—it was a ridiculous story—he carried out the order and picked up the cow-dung. There came a road. There were six men who stood just for the purpose of giving a stroke as he lifted the load. That I submit defeats itself. In cross-examination—that is where I wish to call attention to a few passages—this is what he says. "He said that we had now fallen from the English into the Japanese hands and we have to carry out their orders and do their fatigues. He told us that the British had run away and left us there. He said that our home was in India and we have to join with other Indians to fight for India. He also said that for this reason we should join the I N A. He also said that the I N A was being formed to set India free. He said that for this reason we should join the I N A. About one or two men said that they did not know anything about the I N A and they were not going to join it. At that time we did not know what this I N A was. I know Jamadar Til Bahadur Adhikari." This is a very important thing. They are the people who are said to have come in this party to attack this gentleman and his friends in order that they may be coerced to join the I N A. It would be fortunate if one can think a little in advance. He admitted that every single one of them who took part in this raid to induce this gentleman and his friends to join the I N A were all men respected in their Regiment and respected in the parts of the country from which they came. If he had only realised what it involved, he would probably not have admitted it. "I came to know that the I N A was being formed. I know Jamadar Til Bahadur Adhikari. Jamadar Puran Singh Khawas was a man who

was respected by our unit and so was Jamadar Til Bahadur Adhikari. Jamadar Til Bahadur delivered only one lecture at which I was present. He also told us about the object of the I. N. A. which was the same as Puran Singh had told us. When Til Bahadur delivered the lecture there were about 600 men present. He admitted to me that they were being asked in the ordinary course to join the I.N.A. asked by people whom he admitted to be respectable and the point in asking for the admission is this, that those were among the people who came armed with a view to attack these innocent men in order that they may join the I.N.A. I make a present of that kind of story for your acceptance.

Then Sir comes in very common parlance the cat out of the bag. Those who did not join the I.N.A. were required to do fatigues for the Japanese. Those who joined the I.N.A. were not required to do fatigues for the Japanese.

Prosecution Counsel. I am afraid my learned friend is under a misapprehension. He gave no names.

Defence Counsel. In his examination-in-chief he gave the names of the people who formed the party of attackers. It comes in cross-examination.

Prosecution Counsel. He does not say that these were the people who came to assault him. I know my learned friend put those names to him. No such questions were asked that these were the people who were in the firing party.

Judge Advocate: That certainly was not said Mr. Desai.

Mr. Desai. The point of the argument will be perceived, name or no name. "Those who did not join the I.N.A. were required to do fatigue for the Japanese. There was dispute when we refused to do fatigue duties for the Japanese. The leaders whom I have named told us not to object to the fatigue. In spite of their persuasion some of us did not obey. We reported that we will do fatigues for the Japanese but we have nothing to do with the I.N.A. The guard was sent because some of us did not obey. That is the point. The point is that it was not because they were to be persuaded to join the I.N.A. that the guard was sent. On his own admission they did not obey to do the task they were sent on and that destroys the whole of that evidence, names or no names. His whole purpose was that these people came on their own with a view just to educate them because they would not join the I.N.A. If my learned friend will follow the process of cross-examination and the admission made by Woli Bahadur I only point out that it was up to the witness to say that they were not in the firing party.

Judge Advocate. It is you here who is in the wrong. You have said that these men were in the firing party whereas it was pointed out that they were not.

Mr. Desai. There is the evidence in chief. I took the names from the summary of evidence. Because of that ruling the names were not allowed to be given. Whether the witness proved or failed to prove that the attack took place, because they would not join the I.N.A. that is the true issue and remembering that to be the true issue, I beg leave to read where I left and that is this. "There was a dispute when we refused to do fatigue duties for the Japanese. The leaders whom I have named told us not to object to do fatigue. In spite of their persuasion some of us did not obey. We reported that we will do fatigues for the Japanese but we have nothing to do with the I.N.A. The guard was sent (that is the material point) because some of us did not obey. You cannot get out of that. In other words the story that the guard was sent with a view to shoot them because they did not join the I.N.A., is entirely destroyed by this evidence. The guard was sent because some of us did not obey. The guard came to seize the ring-leaders. That is precisely my point. I said they were all guilty of one or other offence against discipline and hence action was taken against them and this is the best illustration. Of course people get warned after one man has been

cross-examined you may not get the same type of actual admission. But here you have the clearest possible admission, the negation, the complete negation that any attack was made on them, because they did not join the I N A. Of course, they always repeat like parrots, when it becomes necessary that is what happens. But occasionally there are lapses. "The guard was sent because some of us did not obey. The guard came to arrest the ring-leaders. We were about 550 men. Some of the men had a dispute with the guard. The guard stopped us from doing this and then fired in the air." What possible course for sooth—it was sent for the purpose of asking them to join the I N A and they should have fired in the air! The whole point is that these were recalcitrants, a disobedient crowd. They were asked to surrender. As a warning they fired in the air. They would not obey. Of course the trouble took place. "When we did not obey the order of the guard, they fired. The guard did not prevent us from doing fatigue but they spoke to us about I N A which we did not obey." All this rubbish is difficult to understand. "First they fired in the air, and when we did not obey ultimately they fired at us. About two or three men were injured after the firing. Then we pursued the guard. The dispute between the guard and ourselves was that we resented the appearance of the guard during the lecture time." I do not know what it means. Whatever that means, they know better. As I said here, it is a complete demolition and the best illustration of how the false is mixed up with the true. There is no doubt that there was a scuffle. That is not denied. But they want to annex the scuffle to something else. That is a piece with all the evidence with which I am familiar. You get hold of a known fact which is not disputed, and then put it on to something else. My submission to the Court is that this evidence alone is sufficient to discredit the kind of evidence the Government has put forward with a view to show that atrocities were inflicted for the purpose of joining the I N A. As to the tortures, they were of two kinds. Regarding one, I have got definitely out of the mouth of the witness himself that they objected to the fatigue. They were persuaded not to do it. The very leaders whom they respected, persuaded them not to object to do fatigue. They were again asked to surrender their ring-leaders. These people would not. They fired in the air and ultimately they fired at us. Three people died and there were 550 of them. Such evidence, can my learned friend or any gentleman in his very high position ever place before the Court, name or no name?

Prosecution Counsel. I only corrected a statement which was not justified by the record.

Mr Desai. I admit that I was in the wrong. I say the point of the argument is really this that the witness who came to swear false to the fact that the party was sent armed with a view to fire at them in order to compel them to join the I N A, here stands on his own evidence self-condemned. He admits that the purpose was different. The occasion was different, and that disobedience was the only cause. My case is that the cases which they have selected are cases of a similar kind where people undoubtedly were dealt with for breach of discipline, but which they now attribute to a false cause, namely, their refusal to join the I N A. The next is the case of Mohammed Hayat. That is the case in which we said that because they killed some cows, a quarrel arose and hence a scuffle. It is true a scuffle took place. The question is—was it with a view to compel them to join the I N A. That is where I say they get hold of an admitted event, or a more or less admitted event, and annex it to a false cause. He said

"The Camp Commandant was Captain M Z Kyani, who was succeeded by Col Shah Nawaz Khan. I heard Col Shah Nawaz Khan lecturing to the Camp. I was not present at the lecture he delivered in the camp, but I was present at the lecture he delivered in the mosque. He said that Sikhs and Hindus have already volunteered, and that the Mussulmans should also join." He said.

"Muslims must join the I N A because when the Hindus and Sikhs go they will trouble you in your homes in India. He did not threaten us with force but he said that we ought to join the I N A. He did not say that he only wanted sincere men. He said I will not give any sort of trouble to you, but you should volunteer. I want true volunteers. After *Dua Khair* we said that we will not join the I N A. We meant by that that none of us who were present there had a right to join the I N A. There was no charge against the men of my unit of having committed theft of seven cows belonging to civilians and of having slaughtered and eaten them. I deny that. That charge is a lie and that the cows were eaten is also a lie. I am shown my additional statement in the summary of evidence. I admit that I said in the summary of evidence that Major Aziz Ahmed told us that we were to go to the Concentration Camp because we had killed a cow.

That was at the time they were sent. Remember what was the contemporaneous statement made. I want you to remember that. The Court would have no doubt that that was the real cause of the dispute, and that joining the I N A. or not joining the I N A. was not the cause.

No skins or bones were found and no investigation was made. I never volunteered for the I N A. The Bidadari camp was a mixed Camp of volunteers and non-volunteers in July 1942. Neesoon Camp was also a mixed camp. There was no difference in rations for the volunteers and non-volunteers. In July 1942 there was no separate treatment for volunteers in the Bidadari Camp. I was carrying on anti I N A. propaganda. There was no charge against me of killing or stealing a cow when I was removed from the Bidadari Camp to the Concentration Camp. Aziz Ahmed never told us that we were being sent to the Concentration Camp because we had killed a cow. I am again shown my statement in the summary of evidence. I signed my statement. It was read over to me. I made this statement about Major Aziz Ahmed having told us that we were all to go to the Concentration Camp because we had killed a cow.

In other words at the time when he was taken it was proved from his own mouth that he was definitely told that the reason for his being sent was the killing of the cow.

'On the day I went to the Concentration Camp there were approximately 60 or 70 men there. I said that after two or three days men of my unit were sent away from the Concentration Camp. I and 11 other men were kept there. After our people went away there were approximately 60 or 70 people left. They were all non-volunteers. I am talking of the month of July 1942.

Then comes the most tell-tale thing which any man of commonsense will understand.

I was released from the Concentration Camp after 21 days because I had become very weak.

The whole point is this. Any man reading between the lines will be able to see that these people were taken to the Concentration Camp because they were charged with having stolen and killed a cow. He himself admits that it was a charge made at the time. Major Aziz Ahmed said you have to go to the camp because this is the charge against you. After investigation he was released after 21 days. Is that the real story or what he now says is the real story? It does not show that they were oppressed or coerced to join the I N A.

There is one ordinary canon of reasoning and commonsense. Is the Court to accept the story he said at that time or is it to accept the story

told now? I submit that at that time nobody imagined that anybody was going to make anything out of this incident for the trial against some people in future. The question is, which of the two stories is likely to be true, and I respectfully submit to the Court that there can be only one conclusion. The story he told then is the true story, and not the story he tells now. That is my submission with respect to this witness.

The next witness I take is Ahmed Nawaz, P.W. 10. Every man has to undergo some sort of punishment for an offence. This witness is taking the story as it occurred, and adding to it so as to make out that what was done to him was a punishment to induce him to join the I N A. The only grievance of this gentleman is that he was asked to carry cow-dung. It was not after all such a serious punishment as he tried to make out. When I asked him whether he was asked to mix cow-dung with soda-ash, he said that in his part of the country they did not do so. The time has not yet come in this country for the use of every kind of mineral manure, of any other kind of manure except cow-dung. I asked him whether it was not intended to be used for the purpose of manuring the garden, and it took a very long time before we could get anything at all from this witness. The demeanour of this witness and his behaviour to the Court stands condemned.

I am now reading part of the cross-examination.

"I do not know what the cow-dung was taken for. I only know we were made to take it as a punishment. We stacked the cow-dung near a road in the camp and on both sides of the road was the garden. We were never told to powder the cow-dung for manure. It is correct that I said that we mixed ash with the cow-dung but I do not know for what purpose it was used. I only did it as a punishment."

To this man everything is a punishment. When this gentleman was asked to mix some soda-ash with cow-dung for manure, he thinks it is by way of punishment. He is indignant when he is asked to do something and thinks he was asked to do it as a punishment. He says:

"As a farmer, in our own home, we only use cow-dung as manure and we do not mix ash with it. Only for three hours on the first day I did this work of carrying cow-dung and stacking it near the garden. It was stacked at a distance of about 10 or 12 yards from the garden. For the remaining five days we were digging and levelling earth and preparing garden plots."

When you come to analyse the facts, the indignity this witness comes to nothing. He was asked to do the ordinary work of preparing garden beds for the vegetable garden and mixing some manure. So far as the manuring is concerned, it only lasted three hours of his life time. If this is what is called an atrocity, I submit to the Court, it is a ridiculous type of atrocity. A man is asked to make beds in a garden and prepare some manure, and he imagines it to be a punishment. He may think so, but it is for the Court to say whether it is so. Does the Court believe that it was an ordinary piece of work, or it was an oppression, coercive methods, and I do not know what other language is used to describe it. Is it a torture to prepare beds and to prepare manure? I submit with great respect it is a ridiculous kind of evidence which is put forward as an item of torture, and for what purpose?—for the purpose of making this gentleman join the I N A. Does this stand to reason and commonsense? I submit with great respect that, in spite of the picturesque language used, the Court will not accept the version of the witness. It is a ridiculous thing. He was asked to do ordinary fatigue. This is legitimate work which ought to have been done willingly and it is ridiculous to suggest that this was a kind of torture used to induce or coerce the witness to join the I N A.

That, Sirs, is the evidence of Ahmad Nawaz.

Then, take the next witness, Havildar Mohammed Sarwar. He said "Every body refused to join the I.N.A. The Jamadar and Subedar were armed with pistols and they took them out and started firing on us and ordered the guard also to fire on us. The guard consisted of approximately 14 men. They started firing. Two of us were killed. Everybody said Allah-o-Akbar. Now I will read from the cross-examination of this gentleman. He said 'I was for three weeks in No 4 hospital. It was a very big hospital. There were patients of all kinds there. I was taken to the hospital. I do not know who took me, because I was unconscious.

There was an officer to whom I said that I was willing to join the I.N.A. The only force that made me join the I.N.A. was that I wanted to escape this bad treatment and bad food. When I joined the I.N.A., I came to know that they were trying to free India. And this is the gentleman who says that there was a regular firing in order to make him join the I.N.A. He goes on. I knew I was expected to go and fight. I knew it was a question of life and death. I thought that death was better than these troubles. I had no faith that they would set India free. I had every faith that if I went to the front, I might be able to go to the other side because we had so many hardships otherwise. At the place where we were first there were numerous other people besides the 300. I do not know the Camp Commander's name. The Unit Commander was Lt. Purshotam Dass. That was the Japanese Prisoners of War Camp. We were split up into parties for the purpose of fatigue. On the day prior to the firing accident, we were not divided into parties of 323 for fatigue purposes. We were not asked to form a party of 323 men. We were not given an order. I do not know anything about being asked to surrender our leaders. I never heard of it. It is not true that Lt. Purshotam Dass advised us not to resist. In the party which came to the Camp there was one Mohammedan Jamadar. He was second-in-command of the guard. There was a scuffle between the men of my unit and the guard after the firing had taken place. Only one man of the guard was killed. The guard consisted of about 300. The name of the guard who was killed was Sardar Singh who belonged to the Kapurthala Regiment. That will show who attacked first. I leave it to you Gentlemen to judge who was the attacker and who was the attacked. And remember this that they were in a party of a few hundred whereas the guard consisted as he puts it of 300 men. Because we refused to join the I.N.A. they started firing. That is the picture which we are asked to accept. I submit with very great respect that the story is a most incredible story. There was no conversation and they at once started firing!

Now Sirs that is the story which is presented to you for acceptance and I ask the Court not to accept it because it is a ridiculous story. What is the idea of firing at the men whom they ask to join the I.N.A.? What do you gain by it? You gain this kind of soldiers with a view to fight! My submission to the Court is that there was this scuffle which he reluctantly admits, and evidently they were the first attackers. But they have employed a little story by means of which they say that there was firing on them. If the Counsel thinks that he can walk away with this story I submit he is mistaken. But when you come to torture I ask, is it supposed to be a torture? It was an ordinary fatigue duty. In this connection I would like to call the attention of the Court to the Geneva Conventions' Articles 27 to 34 with reference to the work of the prisoners of war on page 298. I am talking of 1929. 'They should be kept according to their rank and if they are physically fit they may be employed by private individuals, but the captors must assume entire responsibility for their maintenance.'

Prosecution Counsel. I am afraid I must interrupt. The evidence is not as my learned friend reads it. The evidence is not that the guard was killed first.

Mr. Desai. What he said was. The name of the guard who was killed

was Sardara Singh There was no other member of the guard who died before Sardara Singh was killed " I had not the least doubt about it

The point that I submit to the Court is this The witnesses fall into three types of classes The first category belongs to the cow-killing incident The second that the incident was with reference to refusal to do fatigues The third relates to the incident of refusing to form parties for fatigues as required by the Japanese, whose prisoners they were As a result of these three incidents, certain accidents occurred I submit to the Court that the Government had definitely failed to prove any torture for the purpose of joining the I N A Each of these accidents is attributable—in two cases almost—to an admitted fact In one case it is due to the form which the attack took With reference to the other witnesses, the less said the better All that they have said was that they were asked to do certain duties which they thought was an indignity, which they were asked to do, which, I submit, is ordinary decent labour I know many men of higher rank who do gardening as a matter of honourable occupation, and as a change of occupation from ordinary work What these gentlemen were really asked to do was gardening, and they seriously come here and say what an indignity it was to ask a soldier to do gardening And that is why he refused to join the I N A The Counsel has entirely failed to prove what he set out to prove, and I feel the Court should hold if it were necessary—according to my submission it is not necessary at all—that it has not been proved, apart from what is read or stated or alleged, beyond any reasonable doubt, that any torture was inflicted in order to join the I N A That, Sir, is my submission on that count

That is all that I wish to say about the evidence on the subject of atrocities alleged to have been committed on these men to join the I N A With reference to the point that I mentioned in the morning as regards cases which might possibly be relied on, I will give you a list of the three cases which may be relied upon and give you my remarks on them Before that I wish to make a submission. I will make a request at a later stage but I wish to mention to the Court in so far as any new authority is cited by my learned friend I do not want a general right of reply but I will ask the Court in the end that on any new law that may be cited I may be allowed to give a reply because I could have no opportunity even by anticipation of doing it I will make that request more formally towards the end The three cases which may be relied upon are Regina vs Lynch (1903) 1 King's Bench Regina vs Jaegrae (1907) Appeal Cases p 346 and Regina vs Casement (1917) 1 King's Bench I do not wish to address you as if you were a high court, and therefore what I will do is this There are two points which distinguish these cases which I will briefly state They are cases of an individual being charged under the English law for an act of treason, they were not cases of men who were members of an organized army and of an organized Government. The second distinguishing ground is that in these cases there was no question of what I have submitted shortly as double allegiance Therefore my submission will be that if these cases are relied upon this is the answer that I have got with reference to them I will now go on with the regular trend of my argument

The next point which I have to deal with before the Court is the evidence relating to the charges of murder, but I will take them all together without attempting to distinguish them But I distinguish them under two heads one is with reference to the four persons alleged to have been shot on one occasion and Moham-med Husain, the person shot on the second occasion I will first briefly state the case as I desire to present to the Court, and then deal with the evidence It is a matter in which with due submission I probably will call attention in some

greater detail to the evidence of three or four witnesses. As to the others, I will only make a submission as to what they said

The position with reference to that is this. As regards the four persons there is a crime report and therefore up to the point of punishment there is evidence before the Court. As regards Mohammed Husain there is no crime report. In fact as regards Mohammed Husain there is no document whatever relating either to the sentence being passed or the sentence being carried out. Further there is not even a casualty record in either case that I find on the record. As to Mohammed Husain the only answer given by one of the witnesses as to why a casualty report was not made was that they were moving from Poda that day and then when I further cross-examined him—which you will find in the cross-examination when I come to it—he has given no adequate explanation for the absence of the casualty report. There is this further evidence—I am only anticipating it—that in the case of Mohammed Husain there are three persons who are alleged to have shot—Jagiri Ram and two others whom Jagiri Ram himself did not know. I do not wish to enter into details at this moment except when I read it but I wish to point out the salient features. It is said in the evidence that Mohammed Husain had three shots on his heart or near thereabout. It is further said in the evidence—he said this—that there was a tear in the shirt and further in answer to the Court, which is most material point, he said there was no blood of any kind or sort. That is the state of evidence with reference to Mohammed Husain.

And now I will deal with the two sets of cases. There is one other ruling which I should have mentioned and that is that there is in evidence before the Court that Lt. Dhillon who is said to have signed and watched the sentence carried out was in a state of complete collapse of health and on that the document before the Court is Exhibit VVV. And the date of that document is 6th March 1945, the date on which it is alleged this execution was carried out. I am reading this relevant part of that document which is at the bottom.

Jai Hind—I think most of your queries have been answered in this order. Others I will answer when I come tomorrow. I ought to have come today but last night I went to check certain defences and on my arrival back I felt very weak, so weak that I have never felt before throughout my life. Major Shankar gave me an injection today though for a complete course I must get 12 here when there are none available. I will get one tomorrow.

My case is that so far as carrying out the sentence on the four persons is concerned, though in fact the order was passed it was never carried out. Not only that, but I will be able to point out from the evidence on record that there are many other similar instances, sworn to and admitted by the witnesses for the Prosecution. That is in outline why I submit that the case in so far as the execution of the sentence is concerned is not proved. I may go a little further and state to the Court that there is no presumption that because sentences were passed they were therefore carried out. The charge of murder has got to be proved by proving completely what is called the *corpus delicti* of that particular person. And I will say that if there is a reasonable doubt in your mind that the Prosecution has failed to prove the actual execution of the sentence, my clients are entitled to the benefit of that doubt.

That is the position with reference to the executions. There are four witnesses with reference to Mohammed Husain. As regards the first witness Havildar Ghulam Mohammed the evidence need not be read to the Court because all that he says is that he was brought up before Capt Shah Nawaz which in fact is not denied. There is this in Ghulam Mohammed's evidence.

them out as he spoke to us individually. He wrote on the crime report which had already been drawn up.

That is his part of the story. Then we come to the actual evidence of persons by whom sentence is said to be carried out,—Jagiri Ram. You have seen him in the witness box. He is in the Nursing Department. He admitted to the Court that he had never handled a gun in his life, or a rifle, or any shooting instrument. But in order to give the colour of truth Jagiri Ram is made to say this. I was unwilling. I do not know how to shoot. I have never handled a shooting instrument, but a gun was put on my shoulder. I ask you Sirs, to give me the benefit of any description on his part rather than attempt to construct the story for him as if he did so. Then he put the gun here and the trigger was pulled and it seems that this untutored rifleman was extraordinarily accurate that along with the others all the three shots lodged in the chest of the deceased. Sirs it will be for you to judge the story. I am going to read out only that part of it which is material.

I knew Mohammed Husain and Allah Ditta. Mohammed Husain myself and a Garhwali talked about escape when we were in Popa Hill area. While we were talking of escape, Khazin Shah sent an orderly and ordered us to report to Battalion Headquarters.

Mohammed Hussain said that he had mentioned to Jagiri Ram and Alla Ditta jokingly about an escape. Khazin Shah questioned me and asked if they mentioned this jokingly. I replied that I had no proof of his intention to escape, but he mentioned it jokingly to me. Mohd Husain and myself were tied to a tree near the Battalion Headquarters while Khazin Shah was questioning us. Khazin Shah questioned me as to who was trying to escape and I said that I did not know the name of any one who was trying to escape. Then Mohd Husain was questioned. He also said that he did not know anything. After sunset Khazin Shah took Mohd Hussain and myself to Brigade Headquarters. When I was taken to Brigade Headquarters, Mohd Husain, Khazin Shah and one sentry were with me. Brigade Headquarters were near a nullah. On arrival at Brigade Headquarters Khazin Shah went to a telephone and after that Allah Ditta also arrived at the nullah. After that all three of us, Mohd. Husain, Allah Ditta and myself were put in the Quarter Guard and our hands were tied. On the following day we were brought before Col Sahgal. Col Sahgal questioned me as to whether I intended to escape. I said no. I did not intend to escape. During this conversation with Col. Sahgal other people present were Major Negi and Khazin Shah. Col Sahgal asked me if I had reported to any one after Mohd Husain had mentioned to me about escape. I said I did not know anything about Mohd Husain and I did not reply to any N. C. O. I worked with my Medical Officer. Then we came out of the room and went back to the Quarter Guard. Then Lt Aya Singh of Brigade Headquarters gave each one of us a beating and said that he would release us if we would tell him the names of the people who intended to escape. I continued to say that I did not know. Next day we were taken to Divisional Commander, Shah Nawaz Khan. We were accompanied by Major Negi, Khazin Shah and a sentry. All three of us, myself (Jagiri Ram), Allah Ditta and Mohd. Husain were lined up before the Divisional Commander. The Divisional Commander asked me to speak the truth whether I intended to escape. I said "no. I did not intend to escape. Capt Shah Nawaz Khan asked us why we did not report the matter. I said that I did not know anything about it, and I did not intend to escape. He asked if there was any officer or N. C. O. near me. I said no. I was working with my medical officer. Then Captain Shah Nawaz Khan asked Allah Ditta. When Mohammed Hussain had talked to you about escaping, did you report to any one? Allah

Ditta said 'I do not know anything about Mohd Husain's escape, I thought it was a joke, I do not know anything about it' Capt Shah Nawaz Khan then said to Allah Ditta "You are an N. C O Why did you not report?" Alla Ditta begged his pardon and said that he did not know anything about Mohd Husain Then Capt Shah Nawaz Khan questioned Mohd. Husain, and Mohd Husain replied that he was in difficulties and that he intended to escape and asked to be forgiven Capt Shah Nawaz Khan then told him "You are not for our country, you are our enemy I will give you death by shooting" Then Mohd Husain asked for forgiveness and said that he was prepared to go anywhere he was ordered Capt Shah Nawaz said nothing to this

The whole importance of the question is, whether in fact any sentence was actually pronounced But, whether or not it was pronounced, the ultimate issue is, whether it was carried out Like the case of the other two co-accused—Jagiri Ram and the other man—he said that nothing was decided, and "all three of us were then sent out, and taken to Brigade Headquarters accompanied by Major Negi and Khazin Shah"

I need not read the rest of it

Then comes the next material part of the story

I moved towards the Battalion with Khazin Shah and Sub-Officer Barfi Singh When I reached Battalion Headquarters, Khazin Shah told Barfi Singh to take me to Company Headquarters In the evening an orderly took me to Battalion Headquarters Mohd Husain was there Khazin Shah and Aya Singh were also there when I arrived"

The most important point is—and which appears from the evidence of witness—that both Khazin Shah and Aya Singh are alive, and they are the only real proper witnesses to that particular transaction Neither of them has been produced The story continues

"Khazin Shah told me, 'You will shoot Mohd Husain, because you are one of the men who were trying to escape with him' I declined and said I will not shoot him"

I have understood many psychological problems but this particular one is curious, namely, that a man who does not know how to shoot and cannot shoot, is made to shoot just as a sort of punishment, which I do not understand, and which I trust you will not be able to understand even if you set a problem to yourself

Khazin Shah told me "You will shoot Mohammed Husin, because you are one of the men who were trying to escape with him" I declined and said I will not shoot him and that I did not know how to fire a rifle Khazin Shah told me again "If you do not shoot Mohammed Husain, you will be shot yourself I still refused and he drew his pistol"

I can only express my inability to understand this particular psychology except a very foolish invention.

"I refused again and Aya Singh got hold of a rifle He put the rifle to my shoulder and put my finger round the trigger Khazin Shah told Aya Singh to give the order to fire There were three of us, one Singh, one Tamil and myself Mohd Hussain was blindfolded by Aya Singh He was made to sit on the ground with his back against a tree stump and his hands were tied behind his back Aya Singh ordered me to fire and all three fired Mohammed Husain died there Khazin Shah ordered Aya Singh to give the order to fire and Aya Singh gave it Khazin Shah told me to report to my company and not to come to the Battalion Headquarters. That evening we marched off to Logy"

Then we stayed at Logyi two or three days. Then I went over to the British. The cross-examination is further continued.

After I had made the statement it was read over to me and I was asked whether it was the correct version of my statement and I said Yes it was. I was again shown my statement day before yesterday and I was asked if the contents were correct and I said Yes. It was translated to me in Hindustani and read over to me, and I also repeated my statement once again and they both tallied. I have had no training in the use of weapons. I joined the army. I worked as a servant and a labourer. On joining hospital, I was trained in the work of bandaging patients and making their beds. I had nothing to do with the fighting part of the army. Except when the patients were sent to the hospital I had nothing to do with the men of the fighting units.

The point which I wish to make is that not one of the persons is able to identify any of them by even the remotest possible description, and you cannot prove the death of A by saying that I saw somebody shoot someone whom I cannot identify. Continuing be said

Mohd. Husain and the Garhwali I have referred to were members of the fighting units. At the time of the conversation they were not sick. I did not know them before the conversation, but they were living in the same company. I had no talk with them before, but when they came to my company I was in company headquarters. When this conversation took place I was in Popa Camp. I had never been to Burma before. Before joining the I N A. we were given very hard fatigues by the Japanese in connection with the loading of coal at the ports day and night. I do not know the name of the Garhwali to whom I have referred.

The test is whether the other alleged conspirators were known to him.

I know he was a Garhwali because he lived with us and he spoke Garhwali. I had never talked either to the Garhwali or to Mohammed Husain before the day Mohd. Husain joined company headquarters. I had never spoken to the Garhwali before that day in the nullah and from that day's conversation I say that he was a Garhwali. I do not know any language or dialect beyond the dialect which I speak.

I came to know Mohammed Husain in company. He used to live with me at headquarters. He used to sit in my company. I know he was a Moham medan. I do not know anything more about him. He used to speak in Punjabi with me. He used to live with me, surely I knew him. I cannot give a long description of him except his physical description. I do not know anything else about him. It was by chance that Mohd. Husain and I got together and the Garhwali arrived in the meantime.

"When I was arrested I said that I never intended to run away because I would have been also shot otherwise. I knew Lt Aya Singh because he was in my company. I know he is alive. I saw him in Jigargacha and Chittagong. The last time I saw him was at Chittagong where he arrived two or three days after my arrival there in about May last.

'I saw Capt Shah Nawaz Khan at Divisional Headquarters. There were other orderlies and sepoy's there. I do not remember having seen any officers other than Capt. Shah Nawaz Khan. I do not know the English word 'crime'. I know the word 'report' in the sense of making a report to somebody. I do not understand the words 'crime report' which are written on a piece of paper now shown to me. There was no need for anybody to teach me the meaning of crime report when I was about to be produced.

I put it to him to ascertain if he understands the explanation. There cannot be any other explanation except tutoring.

"I was told that a crime report would be put up against me and that we three men would be brought before Capt Shah Nawaz Khan. No announcement was made before me in respect of anybody except Mohd Husain being ordered to be shot. Capt Shah Nawaz Khan did not say anything about myself and Alla Ditta. Alla Ditta was not present with us when we conferred in the nullah . . .

"Mohd Husain admitted that he had intended to run away, that he wanted to run away because he was in trouble, and asked to be forgiven and said that he was prepared to go anywhere that he was ordered to. After that Capt Shah Nawaz Khan said that he (Mohd Husain) was not for his country, that he was an enemy, and that he would give him death by shooting. We were then marched out. I am quite clear that nothing else happened.

"I was given a rifle at the time of the shooting of Mohd Husain. I do not know any weapons other than a rifle. The rifle was put on my shoulder in the aiming position by Aya Singh. I do not know the names of the Tamil and the Sikh who were present at the shooting of Mohd Husain, but they were both present on the scene when I arrived. I do not know anything else about them or what they did. I do not know their names but I have seen them in Battalion Headquarters. I cannot say anything more about them than what I have said. I was not myself then. The rifle was put into position and I was told to hold it. I held it with the help of Aya Singh. The rifle was pointing to Mohd Husain. He was sitting on the ground about five yards away. I pressed the trigger when one, two, three was said. Three shots were fired but I do not know which shot shot him down. I did not go to Mohd Husain's body to see how many shots had penetrated it. I did not go near Mohd Husain's body after the firing. The last time I saw it, it was lying there."

This is the account given by Jagiri Ram and the most important points are these. First, that he did not know his fellow shooters and he cannot identify them. Secondly, he admits that Khazin Shah and Aya Singh are both alive. The third thing that he says is that I do not know Mohammed Husain and there is no intelligible ground given why a man who did not know how to shoot was made to go through this process and it is for the Court to give some explanation. I can only submit that I can find none, and under these circumstances, I ask you to say that this witness's evidence is evidence which falls short of proof of the death of a particular individual otherwise not described, and in the absence of two persons who have not been produced before this Court.

Then, Sir, there is one more witness on this point, and that is witness L/Naik Sardar Mohammed. I will read the evidence which relates to this matter.

"I knew Mohammed Husain. On the 27th March, Lt Khazin Shah sent for the runners. On arrival of the runners he ordered them to bring the following men to the Battalion Headquarters: Sepoy Mohammed Husain, Lance Naik Alla Ditta, Lance Naik Mohammed Shafi, Sepoy Jagiri Ram and Sepoy Gobbru Singh. Khazin Shah told me that these men intended to run away. He further told me that he was going to Brigade Headquarters that evening to talk about these men, and he went away. I met Lt Khazin Shah on the way and I handed over these men to his charge. He let off Lance Naik Mohammed Shafi on the spot, because his platoon commander had recommended him, and I came back. He said that Mohammed Husain had been sentenced to be shot."

I submit with due respect that it is not good evidence.

To be shot. Nothing was said about others, but Jagiri Ram was with him at the time. He asked me to go to Ghulam Mohammed, the Brigade Adjutant and ask him whether Mohammed Husain was to be shot under Battalion arrangements.

or Brigade arrangements. I was also asked to bring Sepoy Mohd Ibrahim who had been released from the quarter guard. I received instructions that Mohd Husain was to be shot under Battalion arrangements and on that day I brought him back with me to Battalion Headquarters. I received these orders to Lt. Khazin Shah. Lt. Khazin Shah then ordered me to arrange the execution of Mohammed Husain. He asked me to detail 10 men to pick axes and shovels. I detailed these men to dig a grave. I know that the grave was dug. I was then ordered by Lt. Khazin Shah to take Mohammed Husain to the edge of a nullah. Mohammed Husain was taken to the edge of the nullah by Lt. Khazin Shah and Lt. Aya Singh and Havildar Major Govind Singh. Some of us and myself went with Mohammed Husain to the nullah. Lt. Khazin Shah ordered Mohammed Husain to be tied to a tree and also ordered that he should be blindfolded. I passed on the orders to Sub-Officer Govind Singh who came out with the help of two other sepoy. After this Lt. Khazin Shah called me out of the fatigue party to shoot Mohammed Husain. They were both of them one was a Tamil and the other was a Sikh. After the arrival of these men, Lt. Khazin Shah ordered that Jagiri Ram would also fire on Mohammed Husain. The men stood in a line facing Mohammed Husain and Khazin Shah told Aya Singh to give the order to fire. Aya Singh hesitated. Khazin Shah once again ordered to give the order to fire. Aya Singh gave the order. Kneeling Fire. The three sepoy fired a round each on Mohammed Husain. Mohammed Husain was killed. His body rolled over sideways. Khazin Shah then ordered me to arrange for his burial. No casualty report was sent. The sending of a casualty report was part of my duties. I did not make a casualty report because night had fallen and we had to march the same night. On 1st April I escaped and reported to the allied forces.

"The night that Mohammed Husain was shot we moved to Logyi on the 29th March 1945.

That question was put with a view to find out the connection between the day and the day of escape.

I did not have the time to prepare a casualty report of Mohammed Husain's death. On the 1st April 1945 I did not take a casualty report. Capt Sahgal, I do know if any was sent. I knew Jagiri Ram from the time he was arrested and taken to Brigade HQ. I had been posted to the reserve only three or four days previously and that is why I did not know Jagiri Ram. I knew that he was a non-combatant nursing orderly. Aya Singh was the one who ordered Jagiri Ram to fire the rifle. He was standing near him. Jagiri Ram was with help. Lt. Khazin Shah ordered that Jagiri Ram will also be in the firing squad. I could not see very well but the firing squad had been ordered to adopt the kneeling position and they did kneel a bit. I do not remember whether Jagiri Ram was standing or in the kneeling position. He was between 12 or 15 yards away when Mohd Husain fell. I went away giving orders to Abdul Hakim. I went near Mohd Husain and found he was dead. He had three shots in him. The shirt covering his left breast was torn and from the amount of tear I considered there were three shots. I was present at his burial.

(Question by the Judge Advocate)

When I found that three shots had gone into him and that he was on a side I inferred that he was dead. The firing was about 8 to 10 yards from Mohd. Husain. The shooting of Mohd. Husain occurred at about 10. I did not see any blood on Mohd. Husain.

This is the whole of the evidence that you have before the Court and will

absence of Khazin Shah and Aya Singh, with the inexplicable alleged joining of Jagiri Ram, with the complete unidentification of the other two persons who joined in the shooting, and with the most extraordinary story of three shots having gone into the body of this man in one and the same place and not a single drop of blood was found, I submit to the Court that the evidence falls short of any proof of the execution of this sentence

Though it is a small point Jagiri Ram himself said that he fired the rifle standing and I have a vivid recollection that later on, when he was asked to say where his muzzle was pointing he was completely at sixes and sevens to answer the question or to explain the position, or to answer where and how he held the rifle and where he aimed and how he shot That is the position in so far as the record is concerned.

Then to the evidence relating to the alleged shooting of the four persons. The first and the most important point in reference to that shooting is the exhibit 3V which I have read to the Court If you had such clear evidence it is obvious that the other evidence must be rejected You have the evidence about the condition in which Lt Dhillon then was The submission I am making to the Court is that this event did not take place because the whole of the story hinges around order after order being given by Dt Dhillon I am able to show, as I submit I am able to show, that document was written at a time when there was not the remotest occasion of making up any document whatsoever as to the condition of his health But the fact remains that the previous night he had gone out on reconnoitering and he came back, and I ask you to pay attention, 'in a condition so weak that he had never felt like that in his life before' He was actually given an injection by the doctor, that 11 more had to be given, and it was difficult to find any more medicine For that reason alone, if there were no other reason, the picturesque account given by the two witnesses, whose evidence I am going to read as to the company being called out and Lt Dhillon standing and giving orders and calling each man, is a story entirely untrue. More than that, the story of the location of it all seems to be completely upsetting

As to one of the two witnesses a comment is necessary. He had no intelligible reason to be there; and he had medicines to give as I shall presently point out He also happens to be one of the members of the nursing staff and he said he had no reason to remain there But the still more important thing is that the second person says—his evidence shows—that the first witness was not there. What do you make of that?

Counsel for the Prosecution. He does not say that he was not there. He only says, "I did not see any other man"

Mr. Desai. I say that the true inference is that he was not there, because he said he saw nobody, no stranger The evidence suffers from such grievous infirmities first, the practical improbability of the person who gave orders for shooting being there Of course one can disregard anything, but after all you are to judge by human standards and not by possibilities In fact, I do go as far as this supposing a charge of this kind had been brought—apart from a trial of this kind—and evidence had been given as to the improbability of the person who is alleged to have given orders for shooting being there, no jury would ever venture to convict him You may say "Oh, yes the man was ill but we still believe he went there" Of course you are entitled to do so, you are judges; I do not deny that But I ask you to be judges on material before you; and the material before you is such that as judges of fact it is impossible at all events, as I respectfully put it then and put it now—if you had a

reasonable doubt that Lt Dhillon could not have been there that day, I submit there is an end of the case. Any other picturesque description is immaterial. What is material is that the man who is alleged to have given orders for the shooting was not there and whether he was there or not depends on the state of his health, as to which there is a contemporaneous report and I submit to the Court that it would be highly dangerous to accept, in the state of that man's health, the story of these two men. As to both of them I will be able to point out inherently from their own evidence that they are not witnesses of truth and that you prefer that evidence and act on your own peril. I submit that is the real issue before the Court. I will read the evidence of the other two persons who said they were there.

There is another point which also comes out. There is no identification of the persons alleged to have been shot with the persons mentioned in the crime report. I do submit to the Court that if you find a Crime Report and on the strength of that document it is quite easy to have two willing witnesses of this kind—people who I submit, on their own confession (and I can show it by examination of their evidence) ought not to be believed. I say the strongest piece of evidence in my clients' favour is the evidence of his state of health that day, and you cannot disregard it. You can say "Oh, no never mind how his health was we still believe he was there." But I submit that that is a process of reasoning which is not, what I may call founded on justice or will be accepted by this Court. I will read the evidence of the first witness on this point.

"One day I was carrying a patient and saw four men near a nullah whose hands were tied behind their backs and who were escorted by two sentries. When I was coming back after leaving the patient in hospital, I noticed some men assembled near the nullah. Seeing this assembly of men, I went up there. When I reached there, one company was fallen in, and a trench had been dug there. The four men were made to sit in the trench. Then Major Dhillon asked for volunteers to shoot these men. Two men from that company and one man from Brigade H Q came up. Their names were Naik Sher Singh, Kalu Ram and Hidayatullah. Two carried rifles and one a pistol. Sher Singh had the pistol. Then Major Dhillon called out the name of one of the four men in the trench. Major Dhillon told the Company present that these four men had gone over to the enemy and had been caught, and therefore their punishment would be death. Then Major Dhillon ordered Hidayatullah to shoot the prisoner who had been called out of the trench first. By this time this prisoner had come out of the trench. He was standing on the edge of the trench. This prisoner was then shot by Hidayatullah and he fell down. The prisoner was not blindfolded. He was about 20 yards from Hidayatullah when fired upon."

Then there is the description about the other three men in the same way. Then he says:

"I did not see them moving after Sher Singh had fired. Then I saw Capt Lee, the Medical Officer of the Battalion examine them. Capt Lee said something to Major Dhillon."

Capt Lee is another witness who should have been called to prove this.

"Afterwards Major Dhillon ordered the dead bodies to be buried. I did not see them being buried. I went over to the Gurkha Regiment a fortnight after these men were shot. These four men who were shot were Jats. I know nothing else about them."

It is most extraordinary. You have A, B, C and D condemned to death, and you are asked to believe the one man who did not know who they were. In a

trial for murder, if you are told that A was ordered to be shot and some one says "I saw somebody shot and therefore I come to the conclusion that A was shot," I think one would be shocked to hear such a thing. I submit we have made our points quite clear in cross-examination. This witness said :

"I have never seen these men before. I did not know where they had come from."

It is not the charge at all that any four men were shot for any other crime or for no reason whatever. You are not called upon to say whether some other men were shot or why they were shot. That is not the charge.

Having dealt with the first part, which I do not want to repeat again, you will see how many infirmities are there. First, the improbability of Lt. Dhillon being there, according to the description in the sick report : next, no identification of any of the four men, never having been seen by these two men before. I do not say merely the cumulative effect of the whole thing—but even if any one of them was wanting you cannot say it is proved.

Then I have tried to prove from this evidence as far as it is possible to do so, as to whether or not he was required to go back to his duties, and he ultimately had to admit that he could not be there in the proper discharge of his duties ; and after all the way in which you will judge a man is not by merely saying what they did, but by the probabilities of circumstances. If a man is expected to be on duty, and he says he stayed away out of sheer curiosity, would you rather prefer to believe that he went to his duty and was not there, or are you prepared to say, just because he said so, that he was there ? He says further :

"I stopped there for about half an hour." It is rather important from the point of view which I submit is of a man in that condition which as I said, is a fact which you cannot possibly disregard. In that condition, according to him, this process took half an hour. Then he says.

"I had nothing to do with either the men who were present there or the incident which took place there. I cannot tell the date or the week or the month on which this incident happened. I went over to the Gurkha Regiment which was in a nearby village, the name of which I do not know. The incident to which I referred happened in 1945. I did not mention this incident at all in the Gurkha Regiment. I did not talk to anybody out of the assembly, in the *nullah*. The company assembled in the *nullah* was about 100 strong."

The next witness will tell you there were about 25 men there—

"I did not see any outsider apart from the officers, the company and myself."

If in the teeth of that, the Advocate-General still insists that my interpretation of the evidence of the other man that he was no stranger is not correct, I ask the Court not to accept such an argument, because he may be plain and tell us who were there. I cross-examined the other witness and asked him whether besides the officers and the Company there was any stranger, and he said 'No', and if after that I am to be told that I have not proved from the mouth of the other witness that the first witness was not there, it is an untrue interpretation of the evidence. He further says :

"I knew the names of Hidayatullah, Sepoy Kalu Ram and Naik Sher Singh because they belonged to my Battalion. My duty was to render first-aid. I never preferred first-aid to the three men I have mentioned. While at Popa, the Battalion consisted of 200 to 250 men. The three men do not come from the same place in India as I do. I do not know where they come from. I had no personal contact with these three men before that date. I had nothing to do with them after the incident."

I say the probability is one in a thousand—the man knows nothing before, knows nothing afterwards, does not shoot and does not know how to shoot has no business to be there, and yet you are asked to believe that evidence that the shooting took place. I submit it is a story which men of reason, just as we have on this tribunal, will not accept. The evidence goes on—

‘They used to be in my Battalion and I knew them. I cannot give the nominal roll of all the men of the Battalion. I know the names of some but not of all men in the Battalion. I can give the names of 10 or 12 people in the Battalion.

I did not talk to any of these men before that date. I have never seen these three men since.’—(that is with reference to the person alleged to have been shot)

‘I was 10 to 12 yards away from Major Dhillon. Nobody asked me why I was standing there. I had nothing to do with what Major Dhillon said on that occasion. I am not a poet. I am not a writer either. I swear and say to the Court that I remember every detail of what I have told the Court. I remember very well that none of the first men nor any of the other men were blindfolded. I omitted this detail in my evidence because I was not asked. I said that three volunteered to shoot these four men. The whole Company was armed. Most of them had rifles and a few of them had not. I knew at that time the name of the man whom Major Dhillon selected to shoot first. I do not know the names of any of the four men who were shot nor do I know their identity. After the shooting, Major Dhillon went away and so I went away as well. At the beginning I did not know what was happening there, but when I came to know what was happening there, I stayed on to see the end. I was 12 to 13 yards away from the place where these men fell. This occurred at about 4 o'clock in the afternoon. I did not have a watch.

The next improbability is that at the time there were sudden air raids and this process which, according to the witness went on for half an hour is a matter for you to consider. But the important points are those which I mentioned first. This witness himself says:

The place was subject to air attacks during those days. Aeroplanes used to come over us frequently. There were trenches about and the nullah was a sheltered area. I do not know the persons who chose the nullah. I am shown my statement of the Summary of Evidence. I signed that statement and identify my signature. It was read over to me before I signed it. My attention is drawn to the passage. As far as I remember I said that Major Dhillon had ordered Sher Singh to fire a pistol, but it was not taken down.

I mean, he is quite willing to improve on any story so long as you ask him to do so.

‘I was not interested in Captain Lee's examination or his Report. I was not interested in their burial either. Darbans Singh gave orders for their burial in my presence.’

Questioned by the Court he said:

‘This Company in the nullah was properly fallen in. These men were in front of the Company. The Company was about 10 or 12 yards from these men and I stood near the Company on one side. Major Dhillon gave orders for the fourth man to be shot.’

Sepoy Gian Singh. ‘I remember four men being shot there. At about 4 o'clock one evening our Company got orders to fall in in a nullah. On arrival there I saw four men whose hands were tied behind their backs. They were in a trench. Major Dhillon said that these four men had tried to go over to the

British and so they were sentenced to death” Then he gives the names and details of the shooting of each man “These four men who were killed were Jats I do not know anything more about them” For all I care any four Jats were killed, that would be the proof That this particular sentence was carried out would be, I submit, the height of improbability, and unless there is definite evidence that the four particular individuals named in the crime report were shot, as having been identified as having been shot, I submit to the Court that you cannot possibly hold that these particular four persons were shot The charge is aiding or abetting or the committing of the crime of shooting, and by proving that a Jat was shot, I submit with very great respect, nothing is proved My case is honestly and deliberately that this is a false story The sentence was not carried out But taking everything against myself, and standing before a Court of law I say you do not establish a charge of shooting A by saying that you shot a Hindu A Hindu may have been shot for all I know on the same day.

Then, Sir, we come to the cross-examination of this witness “The nullah to which I have referred was about five feet wide” Imagine the picture as this man gives, and of course it cannot possibly agree with the other picture The other picture was one hundred people were present This man’s picture is that “from where I stood to where the trench was, it was about 25 feet, 20 feet deep and five feet wide” Few would believe that the company had fallen in in such a place for such a purpose I cannot imagine that a company would be asked to fall into a kind of well as this gentleman has described Then he says that the height of the room was about 20 feet “There were about 30 men in this space Such men of the company as were in the lines were present there Some men had gone out on fatigue The trench was dug at one end of the nullah I do not remember how many officers were there Capt Dhillon was in front of the company The trench was below the nullah bed I did not see the depth of the trench The trench was between 20 and 25 yards from where the company had fallen in A person in the trench could hear what was said from the place where the company was, if it was spoken loud enough to be heard In that narrow space it is impossible to suppose that the other gentleman if he was there could ever have escaped detection The man says that the whole process took half an hour, and hence the value of the submission that I make “I do not remember any person not belonging to the company being there” I say that it requires a lot of conviction to submit to a court of law that this does not prove what I say it proves, namely that the first witness is proved by the second witness not to have been there After all he said that there were thirty people He knew that they were members of his company Others had gone out on fatigue duty This man says definitely “I do not remember any person not belonging to the company being there” I submit with great respect that it has only one and one result, and that is that at all events the second witness says that the first witness was not there at all Remember that within that five feet space you could not escape noticing any man. You could not help it if he was there “We were standing in a place like this room except that it was not so broad At some places it was wider but the place where we were standing in the nullah was about 5 feet broad - Of these three men who volunteered to do the shooting, two belonged to the company and one to Brigade Headquarters Police Those three men who did the shooting were fallen in with the rest of the company when they volunteered to shoot Because of air raids men used to go and hide themselves in the nullah bed and Naik Sher Singh was hiding in the nullah at the time At that time there were constant apprehensions of air raids The trench was about 20 yards away from where I was standing The trench was at right angles to the bed of the nullah I did not notice at the time what the length of the trench was I did not notice whether the nullah was any wider at the point where the trench was - We were standing in two lines in the nullah facing the end of the nullah and I was in

the middle of the company. All the men were facing towards where the men were shot. The men were in two groups. Major Dhillon was standing in front of the two groups, about 2 paces away from me. I heard Major Dhillon order the four men out one by one. I do not know their names. I had been in the company for a long time and that is how I knew the names of Kalu Ram and Hidayatullah. I submit that this again falls completely short of the proof of anything whatever like the death of an individual with whose death a man is accused. Remember that you have got to be satisfied, not in a vague sort of way, that some people were ordered to be shot, that some people were shot and those who were shot were those who were ordered to be shot. It is a process of absolutely vicious reasoning which I hope will not be resorted to or made use of by the Prosecution. Merely because the names of four persons whom you say were shot were there, you cannot prove that they were shot by saying that some people were shot.

Therefore, to summarise the evidence, it suffers from the worst infirmities, and much more so in a case where a man is charged with murder. First, it is improbable that the person who is alleged to have given orders was there or could have been there. It is improbable that in that state of health he could have been there for the period of time alleged for the process. Next, neither of the two witnesses is able to identify in the least degree who was shot. Then the second witness says that the first witness was not there, and the second witness gives a picture which it is for you to believe to what extent it is correct. And then in addition to that, I am going to call attention to the evidence of witnesses, where in many instances of that kind, people were sort of sentenced but the sentence was never carried out.

The evidence to which I am referring is the evidence of P W 5 and it belongs to the same period to which this particular alleged shooting refers. The evidence of P W 5 in cross-examination is I know Captain Rab Nawaz. He was the commander of one of the P O W Camps at Port Dixon, and the other camp was commanded by Capt. Karam Chand Bias of the first Bahawalpur Infantry. Capt. Rab Nawaz did not volunteer for the I N A, nor did Captain Bias. After Capt. Sahgal's conference on the 1st of March, within the next two weeks there were several people arrested. After investigation all were released except Capt. Bedi. The reason for my remembering the date on which Capt. Sahgal commanded No 2 Division was that on 28th February 1945 five officers deserted and on that occasion Capt. Sahgal arrested Captain Bedi. Captain Sahgal arrested Captain Bedi on the 1st or 2nd of March 1945 as a Divisional Commander. I do not remember the exact date on which Capt. Sahgal began to act as Divisional Commander.

Then, Sir, you have then the evidence of Gangasaran, to which I have already called attention, and this belongs to the same period as the date of the alleged execution of this sentence. Considering the evidence on record I would submit to the Court that there is such a lacuna of evidence of identity, of improbability, that the Court should hold that there is at least a reasonable doubt whether this particular event took place. I of course put it more affirmatively myself, but feeling as I do in a case of this kind, it is my duty to put the case at the very lowest, and I say that there is want of evidence that is sufficient for my purpose. It is not enough that A should have been ordered to be shot that by any process of reasoning therefore he must have been shot. That is a process which I submit is wrong and not permissible. The actual execution of the sentence has got to be proved with complete identity between those against whom the sentence was passed and those whom it is alleged were shot on this occasion. The thing has got to be proved by affirmative evidence and the burden of proof

is completely on the Prosecution, hundred witnesses notwithstanding. In this case, there are only two. One of them says that the other was not there. The point really is not how the deficiency of evidence arises. The question really is that the burden of proof being on the Prosecution to show that a definite person, A, B, C or D was killed, and died as a result of the action of a person who ordered the shooting is a fact, which must be proved.

All that is proved is, taking the allegation at its face value, that four shots were fired, and the identity of the persons shot is not known. My submission to the Court on that is that the evidence on this point suffers from infirmities which I have detailed to the Court in dealing with the evidence.

Therefore with reference to this charge dealing with murder, my submission is that the Prosecution has entirely failed to prove the charges. The alternative submission is, assuming that the Court agrees with me that this was done in due course of the execution of the duty of an officer in the I N A governed by its own code, there is no question of any liability.

I say that Kalu Ram and Sher Singh who are said to have fired the shots are alive, and there is not that sufficiency of evidence either on facts or identity. Therefore I ask the Court not to run away with the idea that a sentence was passed on A, B, C and D, some people were shot on that day, and therefore the persons shot were those identical persons. This is a point which I cannot too often submit for the consideration of the Court. To say that A was shot because some persons were shot, is indeed a piece of logic which ought not to be allowed in a case of this grave magnitude. It is not permissible even in an ordinary case. The question says: Did you see A? The answer is: I do not know, but I saw somebody going into the fort and he was expected to go there. In a case of this kind, to say that he did go, would be the height of wrong reasoning. That is all I have got to say on the question of the sentence.

I submitted in the beginning of this case that this army of the I N A. was an organised army. The actual sections of the I.N.A Act have been cited, as the Court will see from the crime report, and the Court will see that there can be no liability for any acts done in due prosecution of the war in the execution by officers of their respective duties. That of course is a complete answer. I submit that even if the case is laid against A as a private individual, even then the evidence on the subject of having caused death, falls short.

Then there is a small point. I come to the evidence of Col Kitson and Ghulam Mohammed with reference to the circumstances of Captain Sahgal's surrender. It is a point of substance, because under the terms of the surrender which were offered and accepted, the accused are entitled to all the privileges of prisoners of war on the cessation of hostilities. I shall now read the evidence of Col Kitson, P W. 29. He says:

"I then went forward myself up to the east corner of this village, when I met my leading Company Commander together with Captain Sahgal, the accused. With him were a number of other officers of the Indian National Army and approximately a hundred Indian troops of the I N A at that particular time. More appeared later. My leading Company Commander handed me a note which he had received from a surrender party under a white flag. I am afraid I have not preserved the note. I destroyed it about two months later when I was going through some papers, and I am afraid I saw no importance of this note which I threw away. The note was addressed to the Commander of the British Forces, or may have been addressed to the Allied Forces, and it said that approximately 30 officers and 500 troops of the I N A wish to surrender as prisoners of war. I then talked to Captain Sahgal, and he gave me his name and

his regiment. He said 'I am Captain Sahgal' and I asked him what his unit was both in the I.N.A. and in the Indian Army and he told me then that he had been in the 5/10th Baluch and that he was then commanding a regiment of the I.N.A. and that he had with him there at his Regimental Headquarters a 1st Aid attachment and one Battalion of his Regiment. I then made arrangements for the collecting of all the arms of the prisoners and arranged with Captain Sahgal about their feeding. We had no food for them.

You have to read this evidence in the light of what Ghulam Muhammad said. He has given evidence before you to this effect that all non commissioned officers collected together they were given an hour's time to consider the question of surrender as prisoners of war, and that if that was not accepted they were prepared to fight. A letter to that effect was written and despatched, and you have the evidence of Col. Kitson as to what happened. Under these circumstances I submit that in so far as the surrender of Captain Sahgal is concerned it has been on the terms on which the offer was made, and I submit he is entitled to be released.

There are one or two small matters which I should like to deal with before I raise three points of law. You must have heard the evidence of the last defence witness Captain Arshad. He gives you a truthful account of what occurred prior to the surrender of Rangoon, and the reoccupation of Rangoon. I have produced four documents which clearly show the recognition on the part of the British officers of the existence of an organised army called the I.N.A. The men in charge have been addressed by their proper designation and they have been entrusted with definite duties and there is ample evidence to prove that the I.N.A. was an organised army, and it was treated as an organised army. I would draw your attention to Exhibits 5 Us, 5 Vs. and 5 Ws. You will find instructions there regarding the address of officers. This includes a document by Brigadier Lauder.

So, I submit that right up to the time of the surrender there has been recognition on the part of the opposing armies, that the I.N.A. was an organised army and it was so referred to and addressed through its proper officers. They were also recognised as officers for the time being. That Sir is practically the whole of the case regarding the documents and the recorded evidence.

I now come to certain submissions regarding further points of law. They are three in number and they are founded on a true interpretation of the Indian Army Act and of the rules thereunder. Under Section 41 this Court is authorised and is given jurisdiction to try among others civil offences.

The word 'civil offence' is defined in the Act itself. Section 7 Sub-Section (18) reads 'A civil offence means an offence which if committed in British India would be triable by a Criminal Court.' The question really depends on the true construction of the words 'triable by a Criminal Court'. I know and I am fully aware that the Criminal Procedure Code has not been applied to the proceedings of this Court. But that is irrelevant to the issue that I am now going to submit to the Court. If by the definition under Sub-Section (18) you have to find out what is triable by a Criminal Court you cannot just do it in the air. I defy my honourable friend or anybody else to say what it is unless you go to the appropriate Act which shows what things are triable by a Criminal Court. That is not saying that the Criminal Procedure Code is applied here. That is where there is a likelihood of false reasoning. The point is this. In order to understand one statute and where the statute expressly refers to what is triable by a Criminal Court you must go to the statute which defines what is triable by a Criminal Court. It would be an extraordinary thing if the whole thing were left in the air. Therefore if there is another statute which shows what is triable by a Criminal Court you have got to go to it, notwithstanding that the statute is not applicable to the proceedings of

this Court. What I do say is this If you have to find out what is triable by a Criminal Court, you must go to the statute which shows what is triable by a Criminal Court, and that statute, so far as one is aware, is the Criminal Procedure Code. On that two points arise. One is that under Section 196 of the Criminal Procedure Code it is laid down as follows :

“No court (meaning no criminal court) shall take cognizance of any offence punishable under Chapter VI (which is this offence) unless upon the complaint made by the order or under the authority of the Provincial Government or some officer empowered by the Provincial Government in this behalf ” If merely for the purpose of finding out what is it that is given to you for trial you have to go to another statute, then it is a wrong argument to say that you will not. Let me put it in plainer language. When you say that my terms of engagement are the same as those of Major Preetam Singh's, it is not enough. I must ascertain my terms from the contract. That is the simple illustration which will bring home to even a layman's mind the point that I am intending to make. The point that I am making is this that the civil offences which are committed to you for trial are those which will be triable by a Criminal court. Therefore, my first submission is that what offences are triable by a Criminal court you can only discover by looking at another law which is appropriate to the purpose and not by shutting your eyes to it. When you go and look into that law, what do you find? That law requires that that offence would not be triable by that Criminal Court except upon the complaint of an officer of the Local Government, etc. It has nothing to do with Captain Mead's case or any other case. That was a case of Section 270 of the Government of India Act and has got no bearing on the question. The point is this. How do you discover or where do you discover that the offence is triable by a Criminal Court. That you must discover because you cannot say that anything that is brought to you for trial, you will try. You will yourself ask “What is it that I am entitled to try and if I am only entitled to try that which is triable by a Criminal Court, I must necessarily go to the statute which gives me that power ” My submission to the Court is that by reason of Section 196, no complaint having been made by a Local Government or an officer in that behalf appointed by them, this Court may not try an offence under Section 121, Chapter VI. My next point is again a point of construction, a point which, I submit, is of commonsense. If I am given a power to try offences within a certain limit, then I must find out what is being triable by a Criminal Court. If I find that a Criminal Court is incapable of trying an offence, then you must come to the conclusion that a Criminal Court of its own motion and of its own authority is incapable of trying that offence. If a Criminal Court is incapable without more of trying the offence, equally this Court is incapable of trying the offence. In other words, there are two alternative arguments before the Court. One is that within this sphere of the offences triable by this Court, this particular offence does not fall, in that it is not triable by a Criminal Court without more. In other words, a Criminal Court of its own motion could not possibly take cognizance of this charge. Until the Local Government by itself or through its proper officer, does not move, the Criminal Court is incapable of trying it. Therefore, the question is two-fold. Firstly, that the Criminal Court being incapable of trying, this Court is also incapable of trying it. Secondly, if you put the point that the criminal court is capable of trying, but with a condition satisfied. Therefore, in either view of the case, this Court is not competent to try the charges before it. My submission is that, in so far as the charges of alleged murder by Shah Nawaz or Dhillon are concerned, they are really part of it and nothing else. It is not suggested on the record that either of them wanted to shoot anybody for personal enmity or for any other cause of any other kind. It is patent on the face of the record that they were part of the actions which they took as officers of the I N, A.

Therefore, my submission is that the Court is not competent to try the two sets of offences before it. *Per contra* if the Court is of opinion or should it come to be of opinion that the charges of murder or abetment of murder are independent charges, then my submission to the Court is that under Rule 24 of the rules of conduct of trial in this court, the joint trial is completely illegal on a decision of the Privy Council in Indian Law Reports, 25 Madras, Subramaniam's case. (Rule 24 was read out and the Judge Advocate pointed out the amendment to it) That does not fall within the Rule because as to the murder and abetment of Mohammed Husain all the persons are not there. So that whether you call up this rule or any other rule, there is what you may call in the plain language of the section a complete misjoinder of the charges and of the accused. Shah Nawaz has nothing to do with the alleged murder nor has Dhillon anything to do with the murder of Mohammed Husain. I submit to the Court confidently that if you treat the second set of charges as independent charges, this trial is wholly illegal.

I will now give to the Court the judgement of the Privy Council in Law Report 25 Madras on page 61

'The appellant was tried at the Criminal Session of the High Court, and convicted on an indictment the first count of which contravened the provisions of Sections 233 and 234 of the Code of Criminal Procedure (which provided that every separate offence shall be charged and tried separately except that three offences of the same kind may be tried together in one charge if committed within the period of one year) and did not fall within the provisions of section 235 (1) which provides that if, in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence. On a case certified under article 26 of the Letters Patent and heard by the Full Court, it was held by the majority of the Court that the union of the first count with the others made the whole indictment bad for misjoinder, but that it was open to them to strike out the first count, rejecting the evidence with regard to it, and deal with the evidence as to the remaining counts of the indictment. This was done with the result that the conviction was upheld on one count only, the sentence being reduced

Held, by the Judicial Committee that the disregard of an express provision of law as to the mode of trial was not a mere irregularity such as could be remedied by Section 537 of the Criminal Procedure Code. Such a phrase as 'irregularity' is not appropriate to the illegality of trying an accused person for more different offences at the same time, and those offences being spread over a longer period than by law could have been joined together in one indictment.

'Nor could such illegal procedure be amended by arranging afterwards what might or might not have been properly submitted to the jury. To allow this would leave to the Court the functions of the jury and the accused would never have been really tried at all upon the charge afterwards arranged by the Court. The trial having been conducted in a manner prohibited by law, was held to be altogether illegal and the conviction was set aside.'

The judgment of the Lord Chancellor is on p 96

'In this case the appellant was tried on an indictment in which he was charged with no less than forty-one acts these acts extending over a period of two years. This was plainly in contravention of the Code of Criminal Procedure Section 234, which provides that a person may only be tried for three offences of the same kind if committed within a period of twelve months. The reason for such a provision, which is analogous to our own provisions in respect of embezzle-

ment, is obviously in order that the jury may not be prejudiced by the multitude of charges and the inconvenience of hearing together such a number of instances of culpability and the consequent embarrassment both to judges and accused. It is likely to cause confusion and to interfere with the definite proof of a distinct offence which it is the object of all criminal procedure to obtain. The policy of such a provision is manifest and the necessity of a system of written accusation specifying a definite criminal offence is of the essence of Criminal Procedure. Their Lordships think that the course pursued and which was plainly illegal cannot be amended by arranging afterwards what might or might not have been properly submitted to the jury."

It means that it is too late for even this Court to say, "We will either strike out the charge of waging war or strike out the charges of murder and abetment of murder in which some of the persons are uninterested and not charged with reference to offences charged against others."

Then the judgment proceeds—

"Upon the assumption that the trial was illegally conducted it is idle to suggest"—I am glad I am not using those words but the Lord Chancellor uses them—"that there is enough left upon the indictment upon which a conviction might have been supported if the accused had been properly tried. The mischief sought to be avoided by the Statute has been done. The effect of the multitude of charges before the jury has not been averted by dissecting the verdict afterwards and appropriating the finding of guilty only to such parts of the written accusation as ought to have been submitted to the jury."

"It would in the first place leave to the Court the functions of the jury and the accused would never have really been tried at all upon the charge arranged afterwards by the Court."

"Their Lordships cannot regard this as cured by Section 537."

They do not say that any irregularity has not caused injustice and so does not matter. But even that does not exist, because he must be held to the consequence in both ways. My learned friend says that the Criminal Procedure Code does not apply, and as such we proceed. So he cannot have resort to Section 537. And then you get back to a very narrow point that the trial, as I submit, is clearly in contravention of Rule 24 of the Rules of Procedure. It is a complete irregularity and there is no way of curing it. Their Lordships proceed—

"Their Lordships are unable to regard the disobedience to an express provision as to a mode of trial as a mere irregularity."

In other words, you cannot in one trial charge people collectively unless they have committed all the offences collectively, which admittedly they have not done. Even on the extended words which the Judge-Advocate read they would not apply because one thing is quite clear in relation to the charges and that is this, that some of accused are not in any manner liable for the offences alleged to have been committed by others. Therefore, I submit that this trial is wholly illegal. The judgment proceeds—

"Such a phrase as irregularity is not appropriate to the illegality of trying an accused person for many different offences at the same time and those offences being spread over a longer period than by law could have been joined together in one indictment. The illustration of the section itself sufficiently shows what was meant."

The remedying of mere irregularities is familiar in most systems of jurisprudence, but it would be an extraordinary extension of such a branch of administering the Criminal Law to say that when the Code positively enacts that

such a trial as that which has taken place here shall not be permitted that this contravention of the Code comes within the description of error, omission or irregularity

'Some pertinent observations are made upon the subject by Lord Herschell and Lord Russell of Killowen in *Smurthwaite vs Hannay* where in a civil case several causes of action were joined Lord Herschell says that 'If unwarranted by any enactment or rule it is much more than an irregularity and Lord Russell of Killowen in the same case says Such a joinder of plaintiffs is more than an irregularity it is the constitution of a suit in a way not authorized by law and the rules applicable to procedure

With all respect to Sir Francis Maclean and the other Judges who agreed with him in the case of In the Matter of Abdur Rahman, he appears to have fallen into a very manifest logical error in arguing that because all irregularities are illegal that therefore all things that may in his view be called illegal are therefore by that one adjective applied to them become equal in importance and are susceptible of being treated alike. But the trial was prohibited in the mode in which it was conducted and their Lordships will humbly advise His Majesty that the conviction should be set aside.

And I submit it does not require much argument. It is therefore wrong on the face of the charges with which these men are charged, and I submit that this trial is wholly illegal and I ask you to hold it so

That is as far as I will go on the record on the points which arise for your decision and there are very few points indeed. I will plainly and briefly state to the Court the points on which I rely so that there may be no room for mistake or equivocation about it. I say that this is a case of men not acting on their own in any struggle or waging war at all. This is a case of men as part of a regular organized army accepted as such by their opponents fighting a war under the directions of a regularly formed Government. That being so I submit that they are subject to the ordinary laws of war with which I have troubled you at some length namely, they are entitled to all the rights and immunities of belligerents. My submission is that to the extent to which this is a matter pertaining to war and the conduct of war it is outside the municipal law. But I am afraid sometimes in the narrow precincts of a Court like this, one may say 'What have I got to do with international law? But fortunately for myself I am fortified in this case so that I can fall within the four corners of the Indian enactment, i e. Sec. 79 I say that if my first submission as to the jurisdiction of municipal law and its non-application is not upheld by this Court—though I submit it should be—I say that within the meaning of Sec. 79 it is quite plain—you are bound to give effect to it and I have submitted authorities—that the word 'law' as administered in Britain and India recognises the principles of international law. And therefore, if a thing is justified by law I can plead justification before this Court under Sec. 79 That is my first point.

My second point before the Court is that as regards questions which were incidental, I do not wish to repeat them here, though I wish to submit to the Court that the question of allegiance is irrelevant to the issue, but to the extent to which it is relevant I have already submitted that when the time arrives in relations between the Crown and the Colonies, the Colonies are entitled to throw off their allegiance on the outbreak of war for the purpose of their liberation. And I have given you the most classical instance of those who are now the friends of Britain and if I may say so their warmest and greatest supporters in the task of saving civilization. You could not have a stronger instance than that.

Then the next point which I ask the Court to hold is that on a question of

fact entirely, in so far as the Indian National Army was concerned, it was a voluntary organisation. Even if there were conscription, it does not make any difference in this case, because there are countries where there is conscription and punishment attached to it even today. But it has become fashionable to say "Oh, there was torture and coercion" and all the rest of it, and I ask the Court to hold that it was entirely free from any such complaint. At all events, apart from any hearsay, on the evidence recorded before this Court, I have already submitted that the people who complain of torture fall into four classes: there were those who prove that in two cases it was for reasons which are self-confessed in one case and practically admitted in the second case. The first was refusing to do fatigue and the second case was cow-killing. As to the other cases of an isolated character, they are exaggerated, and deserve nothing else but contempt at your hands. If men were asked to do fatigue duty, merely because they have to carry baskets or make beds for the purpose of sowing vegetables, if they say it was torture, I hope my learned friend will not use that word in connection with that conduct.

Then I ask the Court to hold that in any event this evidence is totally irrelevant for the purpose of this case, for the reasons which I have submitted, namely, that the ground on which that evidence was attempted is entirely proved not to exist.

The next thing that I submit to the Court is that the evidence with reference to the alleged charges of murder would be really covered, if I am right in my first submission, by the fact that they are part of the prosecution of the war, in that these people were sentenced by Court Martial to be shot under the proper law. The next thing I ask the Court to hold is that there was an organised Government, that a very large number of Indians in the Far East owned allegiance to this Government, which was recognised, having had ceded to it territories which are mentioned, and it was by this Government that war was declared, and the Indian National Army fought this campaign.

I will hand over to the learned Judge Advocate the list which I offered to give him yesterday on the point which my learned friend on the other side attempts to make, in that as if there was some provision as to flogging, intending possibly thereby to argue that the whole of that Code was an uncivilised Code. I think he was snatching at a complete straw, because as to the rest of the Act he admitted that it was in consonance with the Indian Army Act. And the only thing that he referred to is corporal punishment. I am therefore handing to the Judge Advocate provisions of the law in which the same thing appears under a different head, in force when the Indian Army Act was in operation.

Judge Advocate: Are you referring to Sec. 22 of the Indian Army Act?

Mr. Desai: My learned friend tried to make out as if whipping was a punishment which was abolished with reference to the army in this country, and I submit that he was entirely mistaken.

Judge Advocate: The very first sentence in writing that you have given is wrong. You have got flogging under the Act as it stands. Punishment of whipping can be inflicted on menial servants up to a maximum of 20 strokes—that is what is written here, and the correct thing is 12 strokes on active service.

Mr. Desai: If I am wrong, I must correct myself.

Judge Advocate: I have corrected it now.

Mr. Desai: The point, Sirs, which I am trying to labour before the Court is this. In addition to the provisions in the Indian Army Act, there are provisions under the Defence of India Act and in the Ordinances. All of them have got to be taken together to see whether or not, and what punishment is permissible.

By Ordinance 3 of 1942—if necessary we will produce the actual copy of the Ordinance before you—whipping was ordered as a punishment.

Let me get back to the point: The point really is that in so far as the governance of the Army is concerned it was governed by an Act which, except for the purpose of whipping has been practically or tacitly admitted to be the Indian Army Act. As regards whipping, I submit to the Court that that kind of punishment exists though not in the Army Act wholly, in the three Ordinances which are reproduced. Supposing to the extent to which there was an excess of the number of strokes, I submit with very great respect that it is not going to make an uncivilised Army because of that. Therefore, substantially the point is, there is an army governed by a Code which is substantially, if not actually word for word the same as the Indian Army Act.

I next come to the question that, in fact, the alleged atrocities—that is the mildest word that can be used from the point of view of my learned friend—which are said to have been exercised for the purpose of getting enrolment to the I N A. are in fact not true. The accused are not charged with it, nor have they anything to do with it. They neither did it nor permitted it, nor encouraged it nor have they any knowledge of it. That, Sir is the actual position so far as that charge is concerned.

Then, coming to the alleged charge of murder and abetment, I have dealt with that and I have satisfied the Court that the execution of the sentences has not been proved.

My next submission to the Court is that this trial is wholly illegal.

My next submission to the Court is that so far as the construction of the words 'offences triable by a Criminal Court' is concerned, the Court must have reference to the only enactment which says what are the offences triable by the Court, and you can not do by saying that the Criminal Procedure Code is not applicable—and if it has to be resorted to then it has to be stated. First, this charge is not triable at all. Alternatively, in any case this charge is not triable except on the complaint of a Local Government or an officer authorized in that behalf and such a complaint does not exist. And for this reason my clients should be declared innocent of the charges against them.

The last thing that I wish to say is that if any new or fresh authority is cited by my learned friend which I had no opportunity of meeting I should be permitted to hand in a very short statement, covering a single page, as to why those authorities if they are relied upon are not applicable to the facts of this case or to the decision in this case.

Finally, Sirs, I acknowledge with appreciation the courtesy and attention that has been given to us, and I hope that when I hand over a signed transcript to each member of the Court, it will receive such attention as it may deserve.

Judge Advocate: With regard to your last submission, under what rule are you applying to make another address?

Mr Desai: I do not pretend that there is a rule. It is a matter of common Justice. If any authority is cited by one side which the other side has never had any opportunity of seeing or meeting, with the best of imagination he could not possibly deal with it. Therefore, common fairness demands that he should be given a chance to explain. All that is forbidden is an address to the Court. But surely for your own assistance, if we may pretend that we are able to give any assistance, if anything is cited by the other side which is not seen by me, surely I should be allowed to present to the Court a very short resume of my grounds on which it is not applicable.

Judge-Advocate · Would that not apply to any case in which your opponent had the last word ?

Mr Desai · Then the law is accepted · My learned friend will not contradict it · Even when a man has no right of reply and a fresh authority is cited, he has a right to answer · I hope my learned friend will agree with me there · It is a rule of common fairness · You do not need a rule for this · that a thing which is never urged before this Court, is urged before this Court, and no reply is allowed

Judge-Advocate · As I have often told you, gentlemen, a Court Martial is bound by very rigid rules outside which they cannot go · The rule is laid down for your strict obedience by the Indian Legislature, and whether rightly or wrongly you cannot go outside that rule · Rule 48 of the Indian Army Act is the only rule I know with regard to the right of address, and it reads as follows

(Reads Rule 48 of the Indian Army Act)

That rigid rule is for your strict compliance

Mr. Desai · There is one point I would like to urge · The words are “ The Prosecutor may reply ” · If the Prosecutor confines himself to merely replying to what I have said, I have nothing to say · Let him be confined completely to what I have argued by way of reply, and I am quite content · I am glad that though the ruling is partly against me, it is partly in my favour also · Let that ruling be strictly followed, namely that it will be enjoined on the Prosecution that he does nothing more than reply to what I have argued · Then I am quite content.

Judge-Advocate · The Court regret they are unable to permit a further address by the Counsel for the Defence after the address of the Counsel for the Prosecution

Mr Desai · Would the Court direct that the Prosecutor would only reply what I have argued and nothing more ? You cannot have it both ways

Council for the Prosecution · That is not the meaning of the word ‘reply,’ I submit

Mr Desai · If my friend thinks that he is supporting the cause of justice by saying that I cannot reply to a new matter in case law, that is a new law · Unless he is prepared to submit to this restriction, I submit the law lays on him the duty merely to reply to what I have said · I have nothing more to say, justice or no justice · I hope my learned friend cites nothing that is not strictly relevant to what I have said

Council for the Prosecution · My submission is that it is not replying to what you have said but it means addressing the Court on the case · I ask for an adjournment for my address and I have to ask for an adjournment up to Saturday. What I intend to do is to give my address in writing, if not the whole of it, at least the largest part of it

President · The whole of your address on Saturday ?

Council for the Prosecution · I think so · But I would suggest that an extra hour might be thrown in · If I have it in writing, it will not take so long

Mr Desai · I have no objection

The case was adjourned to December 22

Prosecution Address

December 22

Mr President and Members of this Honourable Court

I will first deal with the charge relating to the waging of war · The evidence shows that all the accused recruited men for the I N A , took part in the organiza-

tion of the I.N.A., gave directions and orders for fighting against His Forces and themselves fought against them. Capt. Shah Nawaz Khan was promoted to the rank of 2nd Lieutenant in the I.N.A. with effect from September 1, 1942. On September 9, 1942, he was made a Major with effect from September 1, 1942. On October 15, 1942, he was promoted to be Lieutenant Colonel. On November 1, 1942, he was appointed to be officer Commanding Cadets Training School from November 26, 1942. On April 10, 1943, he was transferred from Reinforcement Group to the Office of Directorate of Military Bureau. On April 17, 1943, he was appointed Chief of General Staff. In February 1945, he was promoted to be 2nd Lieutenant in the I.N.A. Capt. Sahgal was made a 2nd Lieutenant in the I.N.A. on September 1, 1942, and he was promoted to be Captain with effect from November 1, 1942. On October 15, 1943, he was promoted to be a Major. On October 10, 1943, Sahgal was transferred from the Headquarters of Hind Field Force, C.D.M.B. office with effect from February 26, 1943. On April 17, 1944, he was appointed Military Secretary. Lt. Dhillon was appointed 2nd Lieutenant in the I.N.A. on September 1, 1942. He was promoted to be a Captain with effect from September 10, 1942. On October 15, 1942, he was promoted to be a Major. On November 1, 1943, he was posted to O Branch as Deputy Quarter Master General.

The evidence establishes beyond doubt not only that all the three accused in the I.N.A. immediately after the fall of Singapore but that they also tried to give lectures to make other prisoners of war forsake their allegiance to the British. Capt. Shah Nawaz Khan lectured in March 1942 when he was in the Neesoon Camp to all the V.C.O.s and N.C.O.s who were collected for the purpose.

This is provided by the evidence of Subedar Major Baburam. Jemadar Mohammed Hayat also deposes to Capt. Shah Nawaz Khan having given lectures in Neesoon Camp after the fall of Singapore. Witness Jemadar Iltis deposes to the fact that Capt. Shah Nawaz Khan went to Port Dickson in, or February 1943 and gave a lecture there to the Indian Officers asking them to join the I.N.A. Witness Nayak Santok Singh says in his evidence that Capt. Shah Nawaz Khan lectured in April 1943 in Saletar Camp which was for non-volunteers that it was the duty of every Indian to join the new I.N.A. Witness Lar Gangaram says in his evidence that he saw Capt. Shah Nawaz Khan at the end of April or beginning of May 1943 and that he delivered a lecture to the prisoners of war in the camp.

Witness Naik Santok Singh says in his evidence that Capt. Sahgal in March 1943 came to the men of No. 1 Signal Company and told them that the I.N.A. was going to be formed, would be the new Indian National Army and that the Indian should join it.

Subedar Major Baburam in his evidence says that at the end of February or the beginning of March, 1942, Lt. Dhillon delivered a lecture at Neesoon Camp to the V.C.O.s and N.C.O.s and to the men of the Battalion asking every one to join the I.N.A. Witness Subedar Asal Nur Khan says that he saw Lt. Dhillon at Neesoon Camp at the end of February or the beginning of March 1942, delivered a lecture asking the prisoners of war to co-operate with the Japanese. Witness Havildar Suah Singh says that in June 1942, Lt. Dhillon came to the camp accompanied by Major Dhara and that Major Dhara delivered a lecture asking the prisoners of war to join the I.N.A. Lt. Dhillon spoke after Major Dhara asked them to join the I.N.A. Witness Sepoy Kaka Singh said in his evidence that Lt. Dhillon delivered a lecture in Taiping in March 1943 to the prisoners of war who were there asking them to join the I.N.A.

All the accused admit having fought against the Forces of His Majesty King George VI. In view of that admission it is not necessary to deal at length with the evidence establishing that fact. The entries in the diaries of Capt. Shah Nawaz

Capt Sahgal are themselves sufficient to prove the part which they took in fighting. Witness Sepoy Dilasa Khan who was in the Third Battalion Bose Brigade commanded by Capt. Shah Nawaz deposes to the fighting on the Falam Haka Front. He was instructed to try to contact with a company of Punjabi Mussalmans. In a scuffle which took place, his company captured a party of Chin Levies. With Havildar Nawaz Khan who was attached to No. 1 Guerilla Regiment, deposes Capt. Shah Nawaz giving directions for the fighting in April 1944.

Witness Hanuman Prasad who was in the Seventh Battalion Nehru Regiment which was commanded by Lt Dhillon, deposes to the fighting which took place March 16, 1945, when some Gurkha troops attacked his Regiment at Mying. Witness Gunner Bhal Singh who was in the First Battalion of the Fifth Guerilla Regiment deposes to the encounter with an Allied Patrol on March 3, 1945, near Popa Hill. That was an encounter when two Allied soldiers were killed and two jeeps were captured with a wireless set by the I N A Battalion. One of these Jeeps was in fact, thereafter, used by Capt. Shah Nawaz Khan. An entry in the diary of Capt. Shah Nawaz corroborates this incident.

Witness Sepoy Sadullah Khan who was in the seventh Battalion of the Nehru Brigade deposes to the fighting near Popa Hill under the command of Lt Dhillon. Witness Lance Naik Mohammed Said who was in the Fifth Guerilla Regiment, which was afterwards called the Second Infantry Regiment, deposes to Capt. Sahgal taking over the command in December 1944 and to the attack on Pinyin and to the fighting near Legyi village at the end of March 1945. Witness Havildar Ghulam Mohammed was posted to No. 2 Battalion as adjutant. Lt Dhillon was second in command. The Regiment Commander was Capt. Sahgal and the Divisional Commander was Capt. Shah Nawaz. This witness deposes to the fighting with the Allied patrol on the occasion when the two jeeps were captured by the Battalion. This witness also deposes to the fighting which took place immediately before the surrender of Capt. Sahgal on April 28, 1945.

As regards the Defence application to exclude the evidence of coercion, it is submitted that no such application can be entertained. The Prosecution tendered this evidence on the ground that the Prosecution was entitled to show that the accused tried to win over other prisoners of war from their allegiance to the Crown in order to join them in waging war against His Majesty the King and to show the conditions under which they did this recruiting work. It is true that the Prosecution case is that in the speeches which the accused made they referred to the conditions prevailing and to the hardships which they were undergoing and they held out promises that, if the prisoners of war did join the I N A, they would avoid those hardships and the treatment and that the accused also held out various threats as to what would happen if they did not join the I N A. This, however, is by no means essential to make the evidence relevant. As I said, when I argued the question of the relevancy and admissibility of this evidence, "it will be sufficient for my case to show that atrocities were committed openly and notoriously and that they (the accused) were aware of them, and with knowledge of that they continued to press the Indian prisoners of war to join the I N A." Of course, it will be for the Court to decide after considering the whole evidence.—

- (a) Whether in fact atrocities were committed in order to make the prisoners of war join the I. N. A.,
- (b) whether the accused were aware of such atrocities and with such knowledge continued to press the Indian prisoners of war to join the I N A, and
- (c) whether they held out veiled threats as to what would happen if they did not join the I. N. A.

The Court will come to its own conclusions on these questions, at the proper time, but the question of excluding the evidence cannot arise and the application cannot be entertained.

There is ample evidence to prove that not only men of Indian Army but the officers also were brutally treated if they refused to join the I.N.A. Several witnesses deposed to the fact that while they were being tortured they were told that they would continue to be tortured unless and until they joined the I.N.A. Capt Dhargalkar in his evidence deposed to his experiences in the concentration camp in August 1942. He says that the conditions were very bad and he was not treated as an officer. For the first seven days he and others with him were kept in a tent which was full of white-ants. They were then removed from the tent to a hut about 500 yards away. They had to fall in with the other prisoners to collect their food. There was a lot of wire fences in which lots of Indian ranks used to be kept throughout rain and sun. On several occasions he saw a good number of Indian ranks being beaten. He and others with him had to salute the I.N.A. sentries and if they did not wear head gear they had to bow to them. When he developed some sort of body rash and went to the hospital and asked for medicine, he was told that he could not have any.

Jemadar Mohammed Nawaz deposes to the treatment which he and his companions received in the concentration camp on September 13, 1942. According to this witness they were first deprived of all their belongings and then they were taken to a tent which was surrounded by barbed wiring and guarded by an armed sentry. They were told that as they were undergoing troubles and were educated people, it was better for them to volunteer for the I.N.A. They were also told that they had been asking Mussalmans not to join the I.N.A. This witness was asked to join the I.N.A. but he refused. The next day all those who refused to join the I.N.A. were made to fall in and they were asked to double march. They were then beaten with lathis and made to do fatigue work consisting of carrying dung heaps. While carrying them they were beaten by the sentries who were with them. He further deposes to the fact that there was a roll call every evening and if anybody reported sick and the doctor said that he was not sick he would be given 12 strokes by the cane. He deposed to having seen while he and his companions were doing fatigue a man clad in khaki uniform whose hands were tied to a stick and his feet to iron pegs from behind and two sepoys were beating him. He further deposes to the fact that at the roll call every evening they were told that they were foolish people because the Japanese had promised that they would hand over India to Indians after conquering it. This witness in his evidence said that he never joined the I.N.A.

Capt. Arshad, one of the witnesses for the defence, said in his evidence that sometime in October or November 1942 he was sent for by the V.C.Os. of his unit who had volunteered and the V.C.Os. including Jemadar Mohammed Nawaz and about 400 other ranks, signed their names on the form. When Jemadar Mohammed Nawaz was in the witness box this was never put to him. The summary of evidence of Jemadar Mohammed Nawaz was furnished to the defence a long time before the trial commenced and the defence had also interviewed Capt. Arshad as a contemplated witness on their behalf.

Capt. Arshad also in his evidence said that Subedar Ahmed Khan had been arrested and taken to the detention camp for stealing, and that there was a protest against his arrest. Jemadar Mohammed Nawaz and a few other V.C.Os. also went to the detention camp.

According to Capt. Arshad he was instrumental in getting them out of the detention camp. It is submitted that this version of the story cannot be accepted.

It is impossible to conceive that the Commander of the concentration camp would admit into it all these people simply because they wanted to go in. The evidence of Capt. Arshad on this point, it is submitted, is very unsatisfactory. He himself cannot explain how it was possible that these people could have been taken in. He did not go into the alleged charge of theft which, according to him, was preferred against Subedar Ahmed Khan, and it is difficult to accept the statement that without making any enquiries into the matter he could have asked for the release of these persons.

Witness Havildar Mohammed Sarwar deposes to the incident of the firing in Kranji Camp. According to him, he and the Punjab Mussalmans refused to join the I N A. One day a Jemadar and a Subedar with a guard came to them and the Jemadar delivered a lecture asking them to join the I N A. All of them refused to do so and the guard then started firing on them and two of the prisoners of war were killed. Thereupon, the prisoners of war attacked the guard and the guard continued firing on them and many of them were wounded. One of the guards was killed on the spot.

Later on, some Japanese officers accompanied by I N A officers came and the witness and his companions were told by the Japanese officer that if they continued behaving like that they would be all killed. The Japanese officer told them that if they killed one I N A man they would kill a hundred of them in return. The witness and his companions were then taken to the concentration camp and they were beaten with canes. The witness was rendered unconscious and taken to hospital. He remained in hospital for approximately three weeks. When he was discharged from hospital he was taken to Kranji Camp. After that he joined the I N A because of those troubles. But he had made up his mind that when he was detailed to the front he would desert.

In the cross-examination of this witness, it was suggested that all this treatment was given to them because on the previous day they refused to obey an order to be divided into parties of 323 for fatigue purposes. The evidence of this witness remained unshaken and it is submitted that there is no reason why this evidence should not be accepted.

Jemadar Mohamad Hayat said in his evidence that the Mussalmans of his Battalion did not join the I N A. The Hindus and Sikhs of the Battalion joined it and a few Mussalmans also. He was ordered to join the I N A but he refused. He was of the idea that he should not join the I N A. He always told his officers and his soldiers that they should not join the I N A and he always carried on propaganda against the I N A.

In July 1942, the unit of this witness was at Bidadari Camp. In that month he was taken with 500 men of his unit to the concentration camp. They were stripped of their belongings and they were ordered to take off their Indian Army badges. The officers, N C O s and sepoy s were then taken separately to separate places and imprisoned in separate cages. Among the prisoners there were four I C O s and 12 V C O s. The witness then describes the beating given on the next day to 12 of them, the witness being one of them. They were made to lie flat on the ground and beaten with sticks five feet long and two inches thick. Witness became unconscious by reason of the beating. The other 11 men were also injured by the beating. They were then made to do fatigue consisting of carrying sacks filled with earth. While they were doing this, they were beaten by the sentries who were posted along the way. At night they were not allowed to sleep. One after another of the inmates of the cage had to do duty as sentry in the cage and every five minutes a report was called for by the I N A sentry outside. The inmates of this concentration camp were made to salute every member of the I N A including sweepers. The food which was given to them was absolutely bad.

The witness and his companions complained to the Camp Commandant but he replied that they would continue receiving the same type of food. The witness then told him to shoot him but the Camp Commandant replied that he would not be shot, but that he should volunteer for the I.N.A. He said that if they volunteered they would be taken out of the concentration camp and all good things given to them. He further said that if they did not volunteer they would continue to be beaten like that until they died.

They remained in the concentration camp for 17 days on that occasion. After that they were taken to Saletar Camp. There they were repeatedly given lectures urging them to join the I.N.A. The witness did not join the I.N.A. and carried on propaganda against it. They were then put in an enclosure which was enclosed with barbed wire and after that sent back to the concentration camp, after being in Saletar Camp for about 15 or 20 days. The same 11 men were taken with the witness to the concentration camp and they were given the same treatment as before. On the day following that on which they were taken to the concentration camp they were asked by the Camp Commandant to volunteer saying that, if they did not volunteer, they would get the same treatment as before. The witness and his companions refused to volunteer. The same fatigue was given to them as before. This time they were in the concentration camp for 21 days. They were beaten and no medical treatment was given to them. On one occasion when the witness asked for a drink of water he and another companion of his were given 18 strokes. When they called upon God and his Prophet the persons torturing them replied that the Prophet and God were not present in those enclosures. They added: "If there is a God he is outside these enclosures, inside the enclosures the concentration camp authorities rule."

This time they were in the concentration camp for 21 days and then they were sent to Saletar Camp. They were kept in the portion called D 1 which was for non-volunteers. From there witness was taken to the hospital. He remained in the hospital for seven or eight days. In the hospital volunteers and non-volunteers were kept separate. Some fruit used to come from the Supreme Headquarters and it was given only to the volunteers. The non-volunteers did not get anything. From the hospital he was again taken to Saletar Camp. He was again asked to join the I.N.A. but he and his party refused to do so and they were kept in the D 1 Camp for about one month. They were then sent to the concentration camp where also they were lectured to join the I.N.A. For a third time they were sent to the concentration camp where again they received the same treatment as before.

The witness then describes an incident which he saw of two Sikhs close by being beaten. They were beaten from 9 p.m. to 1 a.m. and then they were put in the hospital close by and the sweeper who was there was told to report to them if the two persons died. The next morning the witness saw them in the hospital tent lying with their faces to the ground and fetters on their legs. This time they were kept in the concentration camp for 24 days, after which they were again taken to the D 1 camp at Saletar.

Ultimately the witness and his party were sent to New Guinea on May 1, 1943. There were about 2,400 persons who went with the witness to New Guinea. The witness never joined the I.N.A.

In his cross examination the witness related an incident of a lecture given by Capt. Shah Nawaz Khan in a mosque. He said that Capt. Shah Nawaz Khan did not treat them with force but said that they ought to join the I.N.A. He said:

"I will not give any sort of trouble to you but you should volunteer."

He further said: "I do not want to press the men but I want true volunteers." After that 11 Mussalmans said: "Dua Khair" and decided in the

"Dua Khair" that they would not join the I N A. It was suggested in the cross-examination that there was a charge against the men of this unit of having committed theft of seven cows belonging to civilians and of having slaughtered and eaten them.

It was put to the witness that in his summary of evidence he said that Major Aziz Ahmad told them that they were to go to the concentration camp because they had killed a cow. Even if that be so, it was merely an excuse for sending them to the concentration camp. Witness denied that any skin or bones were found and denied that any investigation was made.

The fact that the witness and his companions were taken to the concentration camp on three different occasions as stated by him in his evidence refutes the suggestion made in the cross-examination of the witness. Obviously, the witness and his companions were tortured in the camp for several days at a time and then taken back to Saletar Camp and again taken to the concentration camp because such a course was likely to weaken the resolution of the witness and his companions not to volunteer. The evidence of this witness also should, it is submitted, be accepted as true.

The next witness was Havildar Wolit Bahadur. He related the incident which happened in Bidadari Camp on September 24, 1942. Prior to that the witness and his companions had been exhorted to join the I N A. They had often been told that they should join the I N A, otherwise it would have bad results for them. Subsequently about 14 officers and N C Os from the unit of the witness were taken to the concentration camp. The witness and his companions were told that if they did not volunteer it would have bad consequences for them.

The incident which happened on September 24, 1942, was, according to him, as follows. An I N A officer delivered a lecture and said, "We have already informed you about the I N A. You people have not accepted what we said in the lectures. With reference to this I am going to show you one result of your conduct."

The witness belonged to the 2/9th Gurkha Rifles but the followers of this unit were Indians. The followers were asked whether they were prepared to join the I N A. They, however, said that they would stick to their unit and would not join the I N A. The followers were then cruelly beaten. Thereafter the I N A officer called out six or seven people by name from among the men of the unit. He said that they were the ringleaders who did not allow the 2/9th Gurkha Rifles to volunteer for the I N A. He then ordered two I N A men to beat those six or seven people and one of them fell down. Thereupon the unit stood up to protest and said "Even if you beat us like this we are not going to join the I N A but we are ready to do fatigues for the Japanese."

One of the I N A officers then said "Whilst you were gathered at this meeting on whose orders did you stand up?" The men from the unit replied that they were not getting justice and they stood up to make a report. Thereupon one of the I N A officers ordered the guard to fire. At first they fired in the air. Another I N A Officer said "Are these Gurkhas your fathers that you are not shooting them?" The Gurkhas then started moving forward. The guard fired on them and one or two of the Gurkhas fell on the ground. The witness himself received a bullet in his left knee and fell down. Nine people were wounded, eight by rifle fires and one by being struck by a lathi. The unit was then made to fall in and march off. The witness was taken to the hospital. According to the witness, I N A officers came to him in the hospital several times and they told him to sign in the I N A books. They said, "If

you sign the I N A books, you will get good medicines and the bullet will be taken out from your left knee' The witness however, did not agree to volunteer for the I N A. The witness remained in the hospital for about five months. Witness never joined the I N A.

In the cross-examination of this witness, it was put to the witness that there was a dispute about fatigues and that they were required to do fatigues for the Japanese. The suggestion was that the firing was done because the unit refused to do fatigue duty. If the passage relating to this point in the cross-examination is taken as a whole, it becomes clear that the attitude of the witness and his unit was that they were prepared to do fatigues for the Japanese, but would have nothing to do with the I.N.A. The whole of the relevant cross-examination on this point is as follows: 'There was a dispute about the fatigues that they were required to do for the Japanese. Those who did not join the I.N.A. were required to do fatigues for the Japanese. There was a dispute when we refused to do fatigues for the Japanese. The leaders whom I have named told us not to object to the fatigue. In spite of their persuasion, some of us did not obey. We reported that we will do fatigues for the Japanese but we have nothing to do with the I.N.A. The interpretation of the question put to the witness and answers given by him were not quite satisfactory and at this stage Major Pritam Singh was sworn as interpreter. The answers in further cross-examination were as follows: 'The guard was sent because some of us did not obey. The guard came to arrest the ringleaders. We were about 550 men. Some of the men had a dispute with the guard. The guard stopped us from doing this and then fired in the air. When we did not obey the order of the guard they fired. The guard did not prevent us from doing fatigue but they spoke to us about the I.N.A. which we did not obey. First they fired in the air and when we did not obey ultimately they fired at us. About two or three men were injured by the firing. Then we pursued the guard. In his re-examination the witness said that the dispute between the guard and him was that they resented the appearance of the guard during lecture time. In answer to a question by the Court witness said that the bullet was taken out of his knee after one or one and a half months.

The next witness Rifleman Rabilal also deposes to the same incident. He mentions the lectures in the Bidadari Camp in which it was said that those who did not join the I.N.A. would be put in danger later on. Witness further said that an I.N.A. officer told him that if he did not join the I.N.A. he would be sent to the concentration camp and would be given a beating. It was thereafter that the V.C.O.s and N.C.O.s were taken away to the concentration camp. This witness also describes the incident of the firing. Witness said that before this firing took place some men in the Bidadari Camp were doing fatigues for the I.N.A. and others being ill treated. Witness said that he never refused to do this fatigue work and he was certain that none of this company refused. This witness was one of those who were taken to the concentration camp after the firing and he describes the hardship and torture suffered by them there. According to this witness an officer in charge of the concentration camp separated 14 men from the party saying that they were doing propaganda against the I.N.A. and stopping the personnel from joining the I.N.A. The rest of the party were sent back to Bidadari camp. Thereafter the battalion was sent for a second time to the concentration camp. Witness went along with them. On the day following their arrival in the concentration camp the I.N.A. guard there started beating them and making them do fatigues. This continued for five days. After five days they were sent back to Bidadari camp. The witness was then taken to hospital and ultimately he and his unit were taken to River Valley Camp and the Japanese kept them for digging trenches in the jungle. The witness and his party were released from the River Valley Camp when the British Army arrived there. There is nothing in the cross examination of this witness to

throw any doubt on the veracity of the deposition. It is submitted that there is no reason why this evidence should not be accepted by the Court as true.

Another witness examined on this point was Subedar Ram Sarup. According to this witness, as he refused to volunteer he was taken in about July 1942 to the concentration camp with five other men. He was told that he was doing anti-I N A propaganda and that was why he was there and that he would now suffer the consequences. He then gave the details of the cruel beating given to him by an I N A man following the instructions given to him by one of the camp staff in Punjabi in these words "Guests have come, given them a good reception." The witness became unconscious by the beating. The next morning he and several others were made to do fatigue. In the evening one of the camp staff officers with another man came and asked him how he was. The witness replied he was all right. The officer then asked him if he was willing to volunteer to which the witness replied that he had already suffered and was ready to suffer more, but he was not going to volunteer under those conditions. Thereupon the officer abused him and told the other fellow to show him how they treated those who did not agree to volunteer. They then tied the hands of the witness at his back, gave him a blow on the face, kicked him and beat him with a stick. Witness again became unconscious. When he regained consciousness the other fellow asked him whether he was still unwilling to volunteer. This time he gave his consent under the impression that it was better to become a volunteer than to die there of beating etc. In the cross-examination of this witness it was suggested that he had invented this story in order to save his skin when he went back to the Indian Army. It was put to the witness that under the instructions of Capt. S A Malik, he infiltrated into India and that on his arrival in India he reported to his Depot. It is submitted that there is no substance in the suggestion made in the cross-examination. On the contrary if a man was forced to join the I N A under circumstances related by the witness, it is quite natural that at the first opportunity he would report back to the authorities of the Indian Army. The numerous desertions which took place in the I N A. are very significant. As soon as men and even officers of the I N A got an opportunity to leave the I N A they did so and reported to their authorities. It is submitted that the inference to be drawn from these significant desertions is that a large part of the I N A. had been made to join the Army under compulsion.

Lance Naik Fitter Mohinder Singh originally volunteered for the I N A in the Saletar Camp in September 1942. After the December crisis, he did not volunteer and he also communicated his ideas to his companions. Sometime afterwards he and two of his companions were taken to the concentration camp where he was beaten. Before he was beaten, he was informed the beating was given to him because he had done anti-I N A propaganda. After the beating he was put into a barbed wire cage six feet long and three feet wide and he was kept in the cage for 15 days. From the third day he was made to do fatigues. The rice which was given to him and his companions was mixed with lime and grit. He became very weak. He enquired from the sentry how he could escape from there. The sentry advised him not to do propaganda against the I N A but to volunteer. He then became a volunteer. In March 1944, witness was sent to the front. He was detailed to bring rations from a nearby hill. When he went there he found a British Regiment to whom he surrendered. I may add, the evidence given by Col Loganadan in which he says that one case of atrocity came to his notice when a man with gangrene was admitted to the hospital. Col Loganadan made a report about it but received no reply.

It is submitted that there is ample and trustworthy evidence in support of the

fact that gross atrocities were perpetrated by the officers and men of the I.N.A. who were in charge of the concentration camp in order to make persons who were unwilling to join the I.N.A. and those who were advising others not to join the I.N.A. to change their minds and to compel them to join the I.N.A.

A very significant corroboration of this fact appears in the leaflet styled *Our Struggle* (Exhibit 5C) by Rash Behari Bose. The relevant paragraph in this pamphlet is as follows: Prior to election, Mr Mohan Singh in his speech made statements which now appear to be misrepresentation of facts because he solemnly gave us to understand that the majority of the Indian Army personnel were prepared to join this movement without any threat or force and that they had acclaimed him as their military leader. I was horrified at a later date to learn of the atrocities meted out to officers and men of the Indian Army for which the blame naturally falls on Capt Mohan Singh. Many of our poor brethren were shot while many were tortured, humiliated or sent to concentration camp and thus by sheer threat and violence he demoralized the majority of officers and men and compelled them to become volunteers, which is against our principle. I for one will be the last man to see my countrymen shot in cold blood. This is what we are fighting for against the British and I personally cannot afford to see Indians tortured in this manner.

The document was published under the authority of the Indian Independence League. That this pamphlet was widely circulated is borne out by the fact that an Urdu translation of this pamphlet was also published at the same time by the Indian Independence League. The profession made in this pamphlet that the same thing was not going to happen as regards the Second I.N.A. is to be taken for what it is worth. Even as regards the First I.N.A. several witnesses said that those who made speeches for recruitment said that they did not intend to use force or coercion. The question, however, is not what was said but what was done. Mr Ayyar who was in charge of the Publicity Department of the Headquarters of the Indian Independence League in East Asia asserted that the Army was raised voluntarily. When confronted with this pamphlet he said that he did not remember having read this passage and that he might not have read the whole of this pamphlet but might just have seen it. He also said that he did not remember whether the pamphlet was published in Urdu. He, however, admitted that he had no reason to doubt that the pamphlet was published by the Indian Independence League Headquarters at Singapore. In the evidence of Capt Arshad, he said that the relations between Mr Rash Behari Bose and Capt. Mohan Singh were not too cordial. The suggestion was that Mr Rash Behari Bose in this pamphlet made allegations against Mohan Singh which were not true. Mr Ayyar however, admitted that so far as he knew no protest was made against this passage by anybody. The evidence makes it clear that Mohan Singh had a large number of friends and followers in the I.N.A. It is impossible to conceive that, if this passage contained an allegation which was not true, no protest should have been made by any of Mohan Singh's friends.

In view of the above facts the statements made by the defence witnesses that no compulsion was used to make prisoners of war join the I.N.A. cannot be accepted as correct. It was not part of the Prosecution case that the accused themselves committed or helped to commit any atrocities on prisoners of war but it was the case of the Prosecution that the accused held out veiled threats meaning thereby that the threats conveyed were that, unless the prisoners of war joined the I.N.A. they might have to suffer tortures and be the victims of atrocities.

As Counsel for the Crown, it is my duty to concede and I concede that the evidence does not support this averment. The question however remains whether the accused themselves had knowledge of any atrocities that were committed in

the concentration camp The duty of proving this is on the Prosecution. It has to prove it beyond reasonable doubt There can, of course, be no presumption that the accused had any such knowledge, but knowledge might be inferred from such evidence as there is on record. If the Court comes to the conclusion that the atrocities were committed and that such atrocities were a matter of public notoriety, and that the accused could not have been ignorant of them, the Court may come to the conclusion that they had no knowledge of such atrocities On the other hand, there is a considerable body of evidence to show that while delivering lectures in order to persuade prisoners of war to join the Indian National Army the accused said that they did not want anybody to join the Indian National Army It is for you, Sirs, to arrive at your conclusion on the evidence before you.

There is no doubt, and in fact it has not been attempted to deny, that the accused recruited men for the Indian National Army by delivering lectures asking them to join it The further fact as to whether they did it with knowledge of any atrocities that might have been perpetrated can only be a matter of aggravation

International law does not come into this case at all either as regards the jurisdiction of the Court or as regards the law to be administered by it The question is between the State and its subject The accused hold commissions in the Indian Army as Indian Commissioned Officers They became subject to the Indian Army Act and they remain subject to that Act under Section 2 until duly retired, discharged, cashiered, removed or dismissed from service They have not so retired or been discharged, cashiered, removed or dismissed from service In fact, there is evidence which I will point later to show that the officers and men of the Indian Army who, when they were prisoners of war, joined the Indian National Army at first but subsequently did not agree to continue in it after December 1942 were to revert to their position as prisoners of war The argument for the Defence amounts to this that Section 121 (a) of the Indian Penal Code must bear different meanings where the offender is an Indian and where he is not an Indian They want to read into the section a proviso that waging war against His Majesty the King is not an offence if it is accompanied by a declaration of Provisional Government and a declaration of war with Great Britain In fact, a declaration of Provisional Government is itself an offence and such an act cannot give immunity to the offender The object with which the war is waged is entirely immaterial The act is an offence, whatever the motive for it may have been

In Halsbury's Laws of England (second edition), Volume 6, page 504, paragraph 623, the following propositions are laid down "The rules of international law are part of the law of England, but only in so far as they can be proved by legislation, judicial decision, or established usage to have been received into English law A consensus of international jurists even if unanimous does not make a rule of international law a part of the law of England To the extent that rules of international law are part of English law, they are applied by municipal courts so long as they are not in conflict with an Act of Parliament or a rule of common law, but the Courts have no jurisdiction over acts of State "In Halsbury (second edition), Volume 31, page 509, paragraph 959, we have the following proposition of law "Statutes are to be interpreted provided that their language admits so as not to be inconsistent with the comity of nations International law, however, being mainly conventional can, it seems, only be administered by the courts when it forms part of the law of this country If, therefore, statutory enactments are clearly inconsistent with international law, they must be so construed, whatever the effect upon the rights of aliens not within the jurisdiction may be" In footnote (s) at page 504 of Volume 6 of Halsbury, after mentioning that the wider view concerning the incorporation of international law in the law of England is seen

expressed in the cases mentioned there, it is stated that it was also the view of Blackstone, and that the modern more limited view was first enunciated clearly by the majority of the judges in *R. Vs. Keyn*, 2 Ex. D page 63, at page 202 and though the Territorial Waters Jurisdiction Act which gave effect to the opinion of the minority was declaratory in form, the view of the majority has since been upheld in *West Rand Central Gold Mining Company Vs R.* (1905) 2 K. B., page 391. In that case, at page 408, it is stated as follows: 'The expression the law of nations forms part of the law of England ought not to be construed so as to include as part of the law of England opinions of text writers upon a question as to which there is no evidence that Great Britain has ever assented and *a fortiori* if they are contrary to the principles of her laws as declared by her courts.'

In the *Zamora* (1916), 2 Appeal Cases the Privy Council in giving the judgment stated as follows: A court which administers municipal law is bound by and gives effect to the law as laid down by the Sovereign State which calls it into being. It needs to inquire only what that law is; but a court which administers international law must ascertain and give effect to a law which is not laid down by any particular State, but originates in the practice and usage long observed by civilized nations in their relations towards each other or in express international agreements.

This court is not sitting as an international court. It has not to decide questions between different States or between one State and a subject of another State. In *Pitt Cobbett*, Volume I page 4, international law is described as the sum of the rules accepted by civilized States as determining their conduct towards each other and towards each other's subjects and in the footnote it is stated that this definition save for its concluding words is virtually that put forward by Lord Russell of Killowen in 1896 which was judicially adopted in the *West Rand Central Gold Mining Company V Rex* (1905) 2 K.B page 391.

This court is sitting as a court duly constituted under the Indian Army Act to try persons who are subject to the Indian Army Act for offences which are made punishable under the Indian Army Act and the Indian Penal Code.

It was then argued that the word law in Section 79 of the Indian Penal Code includes international law. My submission is that the term 'law' in Section 79 means a law in force in British India. In this connection reference may be made to the definition of special and local law in Sections 41 and 42 as follows: 'A special law is a law applicable to a particular subject', and 'a local law is a law applicable only to a particular part of British India'.

There is a decision of the Bombay High Court which reports my submission. In *re Ram Bharashu* (I L R 47 Bom 907) Section 191 of the Indian Penal Code which gives the definition of giving false evidence is in these terms: 'Whoever being bound by a rule or by an express provision of law to state the truth or being bound by law to make a declaration upon any subject makes any statement which is false and which he either knows or believes to be false or does not believe to be true is said to give false evidence.'

The charge against the accused in that case was under Section 193 for giving false evidence, and in delivering the judgment the court said as follows: 'As regards the offence under Section 193 Indian Penal Code, it is not suggested that the accused was legally bound by oath that his oath was administered under the provisions of law in force in British India or by any express provision of law that is law in force in British India to state the truth before the Vyara court. In that case the charge was for giving false evidence in a court in Baroda territory.'

While repeating the submission that no question of international law can or does arise in this case, it is further submitted that even according to principles of international law there is no obligation on the part of a State to give recognition of

belligerency to insurgents Unless such recognition is given by the State itself, there is no immunity for the persons taking part in the insurgence Further, the recognition of insurgence by another State does not affect in any way the parent State so far as its own subjects who are insurgents are concerned

I will cite only a few passages from Oppenheim's International Law, sixth edition, Vol II, at page 173, paragraph 59, we have the following statement

"In the proper sense of the term a civil war exists when two opposing parties within a State have recourse to arms for the purpose of obtaining power in the State or when a large portion of the population of the State rises in arms against the legitimate Government As war is an armed contention between States, such a civil war would not be war from the beginning nor become war at all in the technical sense of the term But it may become war through the recognition of the contending parties or of the insurgents as a belligerent power Through such recognition a body of individuals receives an international position in so far as it is for some parts and in some points is treated as though it were a subject of international law Such recognition may be granted by the lawful Government and the other States will, in most cases, although they need not, likewise recognize a state of war as existing and assume duties of neutrality But it may happen that other States recognize insurgents as belligerents power before the State on whose territory the insurrection broke out recognises them In such a case, the insurrection is war in the eyes of these other States, but not in the eyes of the legitimate Government "

At page 197, Par 76, we have the following passage "The distinction between legal qualification and actual power to make war explains the fact that insurgents may become a belligerent power through recognition The principles governing recognition of belligerency are essentially the same as those relating to the recognition of States and Governments Certain conditions of facts, not stigmatized as unlawful by International Law—the law of nations does not treat civil war as illegal—create for other States the right and the duty to grant recognition of belligerency These conditions of fact are the existence of a civil war accompanied by a state of general hostility, occupation and a measure of orderly administration of a substantial part of national territory by the insurgents, observance of the rules of warfare on the part of the insurgent forces acting under a responsible authority, the practical necessity for a third State to define its attitude to the civil war Without the latter requirement recognition of belligerency might be open to abuse for the purpose of gratuitous manifestation of sympathy with the cause of the insurgents In the absence of these conditions recognition of belligerency constitutes illicit interference in the affairs of the State affected by civil disorders—an international wrong analogous to the premature recognition of a State or a Government Refusal to recognize belligerent status, notwithstanding the existence of these conditions, must be deemed contrary to sound principle and precedent "

In Oppenheim's International Law, sixth edition, Volume II, at page 200, in footnote (2), it is stated as follows "See also case concerning certain German interests in Polish Upper Silesia where the Permanent Court held in regard to claims put forward by Poland under the Armistice Agreement that the recognition by the principal Allied powers of the Polish Armed Forces as an allied, autonomous and co-belligerent army could not be relied on as against Germany which had not granted such recognition "

The next passage which I will refer to is that which has already been cited by learned counsel for defence That is Para 76a at page 200 The passage runs as follows "Recognition by a third State is not as a rule binding on the parent State Notwithstanding such recognition, it is entitled to treat insurgents as traitors But the position is controversial with regard to recognition as a belligerent power granted to separate armies which comprise subjects of the

enemy who are fighting to free their nation from his rule and which are responsible to an authority recognised as representing the nation in question. It has been maintained that as in the case of insurgents in a civil war the enemy is entitled to disregard such recognition and to treat the members of the insurgent army when they fall into his hands in accordance with the provisions of his criminal law. The better opinion is probably that when such recognition is granted by the adversary to large bodies of men effectively organized on foreign soil in anticipation of independent statehood a point is reached at which the belligerent confronted with the disaffection and desertion of a considerable number of his subjects engaged in hostilities against him can no longer, without exposing himself to justifiable retaliation, assert the provisions of his own criminal law as the only legally relevant element in the situation. This passage does not mean that it is obligatory upon a parent State to grant recognition to the insurgents because the State which was at war with it granted recognition to the insurgents as a belligerent power.

The passage in question refers to the position as between the parent State and the State at war with it, and not the position as between the parent State and the insurgents who are fighting on the side of the enemy State. Further the only effect of the parent State not granting recognition would be that it might expose itself to justifiable retaliation. There is one more passage to which I will refer on the point of recognition as a State. I refer to the first volume of Oppenheim page 125 paragraph 74. Recognition is of special importance in those cases where a new State tries to establish itself by breaking off from an existing State in the course of a revolution. And here the question is material whether a new State has really already safely and permanently established itself or only makes efforts to this end without having already succeeded. That in every case of civil war a foreign State can recognize the insurgents as a belligerent power if they succeed in keeping a part of the country in their hands set up a Government of their own and conduct their military operations according to the laws of war. But between this recognition as a belligerent power and the recognition of these insurgents and their part of the country as a new State there is a broad and deep gulf. The question is precisely at what exact time recognition as a new State may be given instead of the recognition as a belligerent power. For an untimely and precipitate recognition as a new State is a violation of the dignity of the mother State, to which the latter need not patiently submit. It is frequently maintained that such untimely recognition comprises an intervention. This is, as a rule, not correct, unless such recognition is accompanied by active assistance rendered to the rebellious party.

‘In spite of the importance of the question no hard and fast rule can be laid down as regards the time when it can be said that a State created by revolution has established itself safely and permanently. Indication of such safe and permanent establishment may be found either in the fact that the revolutionary State has utterly defeated the mother State, or that the mother State has ceased to make efforts to subdue the revolutionary State or even that the mother State, in spite of its efforts, is apparently incapable of bringing the revolutionary back under its sway. Of course as soon as the mother State itself recognizes the new State, there is no reason for other States to withhold their recognition any longer although they have even then no legal obligation to grant it.

This passage deals with the right of recognition by a third State of a revolutionary State which tries to break off from the parent State. So far as the parent State itself is concerned unless recognition is granted by the parent State to the insurgents, no belligerent rights accrue to the insurgents.

Further in the present case there was no revolutionary State and no civil

war. There was no contention between two States. There was no recognition by the parent Government of the insurgents as a belligerent State or as having belligerent rights. There was no war in the eyes of the legitimate Government. There was no occupation of national territory by the insurgents, no administration by them of a substantial or indeed of any part of national territory. No part of the country was in their hands which they could call their part of the country. There was no revolutionary State, much less any safe and permanent establishment of any such State. The so-called revolutionary State did not defeat, much less utterly defeat the mother State, nor can it be said that the mother State ceased to make efforts to subdue the revolutionary State or that the mother State was incapable of bringing the revolutionary State back under its sway.

As regards the authorities cited by learned counsel for the Defence, most of them are American authorities. This court is not concerned with what the law in America is or even with the view of the American courts on questions of international law. In fact, the law in America is different from that in England. The law in America is that international law overrides previous municipal law of a State. In America there is a Digest of the International Law of the United States consisting of documents relating to that subject issued by Presidents and Secretaries of State, of the decisions of Federal Courts and of the opinions of Attorneys-General.

The propositions laid down in those volumes have all been accepted by the American Federal Government. One of the propositions there laid down is "the law of nations is part of the municipal law of separate States. The intercourse of the United States with foreign nations and the policy in regard to them being placed by the constitution in the hands of the Federal Government, its decisions upon these subjects are by universally acknowledged principles of international law obligatory on everybody. The law of nations unlike foreign municipal law does not have to be proved as a fact. The law of nations makes an integral part of the laws of the land."

The above appears from Maine's International Law, published in 1888 at page 36. Again, at page 37, the author says "Here you see that according to American doctrine international law has precedence both of Federal and of municipal law, unless in the exceptional case where Federal law has deliberately departed from it."

The authorities I have cited above show clearly the great difference between the law in America and the law in England. All American authorities whether in text-books or in decided cases are, therefore, irrelevant.

I will, however, deal briefly with the authorities cited for the defence. A passage in Pitt Cobbett's Cases on International Law was cited in connection with the case of the Paquete Haband which case is reported in 175 U S Reports, page 677. It was laid down in that case that international law formed part of the law of the United States and must be ascertained and administered by courts of justice of appropriate jurisdiction as often as any question of right dependent on it duly presented itself for determination, and for this purpose where there was no treaty and no controlling executive act or judicial decision, resort must be had to the custom and usages of civilized nations.

As a matter of fact that case was one in a Prize Court. Prize Courts are those set up by the respective different States in which they exist and they administer international law. No question of administering municipal law arises in those cases. But even as regards Prize Courts, it has been held in England that if there is a statute which lays down a principle of law in contravention of international law that statute must be given effect to. In the

present case, the court which has been duly constituted according to the law of this country, namely, the Indian Army Act, is trying persons who are subject to that Act, and no question of international law arises

While dealing with this authority, it may be pointed out that at page 21 in Volume I of Pitt Cobbett, it is stated while dealing with the relation of international law to English law, that notwithstanding some statements to that effect made by text writers, and some dicta to be found in the decisions it can scarcely be said that the law of nations is adopted in its full extent by the common law, or that it is deemed to be part of the law of England. It may also be pointed out that at page 61 of the same volume (Vol. I of Pitt Cobbett's Cases on International Law) in connection with the recognition by a third State of the belligerent character of the subjects of another State, that the question whether such recognition should be accorded or not is a question for the political or executive department of Government, by whose action the courts will be bound. It goes on to say "It would seem that such recognition cannot be demanded as of right for the reason that it is strictly a question of policy and not of law"

The question in the present case is as to whether the British Government recognized the belligerency of the insurgents. As submitted above, the parent State is not affected at all by the recognition of belligerency by other States. At page 246 of Vol. II of Pitt Cobbett, while dealing with Prize Courts, the decision in the *Zamora* which has been cited above, is given as regards the international character of Prize Courts and the fact that what it administers is international law.

Wheaton's International Law, Vol. II was also cited by the learned Counsel for the Defence and the passage at page 101 on civil war was referred to. It may be pointed out that the question between a State and its suzerain is entirely different from the question between a State and its subjects. The passage cited expressly states that the Government of the State may recognize its subjects as belligerents in which case other States do normally but need not follow the same course. I submit that it is clear that there is no obligation on the part of the parent State to recognize insurgents as belligerents and there is no right on the part of the insurgents to claim such recognition. The passage goes on to say that the rule of General Grant that the question is one of fact is opposed by the doctrine that the matter is one of unfettered discretion.

The next authority cited was Lawrence on International Law page 309. The passage in question deals with contests between States or between States and communities having with regard to the contest the rights of States. In the same passage it is stated "War is a contest, not a condition and moreover, it is restricted to contests carried on under State authority directly or indirectly given. Then follows the sentence "Private war has long ago disappeared from civilized societies. But the author goes on to say "If individuals now attempt to redress their real or fancied wrongs by the might of their own hands, they are regarded by the law as disturbers of the public peace and their act is an offence in itself however gross may have been the injury that brought it about. At page 310 after saying that all war is now public war the author goes on to say "Even the military and naval operations of revolted provinces or colonies have a public character impressed upon them by the process known as recognition of belligerency. It is clear that the public character impressed upon such a contest is by reason of recognition of belligerency."

The really relevant passage in this book is at page 328 Par 141. "Every independent State decides for itself whether it shall make war or remain at peace. If it resorts to hostilities it obtains as a matter of course all the rights of a

belligerent Other States have no power to give or to withhold them But the case is very different with regard to such communities as are not already States in the eye of international law, though they are striving to become independent, and to have their independence recognized by other powers Technically they form portions of old-established States Practically, each is in revolt against the State organisation to which it belongs in law, and is endeavouring to set up a separate State organization for itself or to gain control of the existing organisation By the municipal law of the country of which the community is still legally a part its members are traitors and liable to punishment as such Yet they are carrying on open war under the orders of authorities analogous to those of recognized States How then are they to be treated? International law gives no answer to this question as far as the Government against which they are in revolt is concerned Questions between it and its rebels are domestic questions to be resolved by internal authority "

Moore's Digest of International Law, Volume I, which was cited is, as the title of the book says, a Digest of International Law as embodied in diplomatic discussions, treaties and other international agreements, international awards, the decisions of municipal courts, and the writings of jurists and especially in documents—published and unpublished, issued by Presidents and Secretaries of State of the United States, the opinions of the Attorneys-General and the decisions of courts, Federal and State The passage cited at page 2 in fact expressly states that "the Government of the United States has, on various occasions, announced the principle that international law as a system is binding upon the nations not merely as something to which they may be tacitly assumed to have agreed but also as a fundamental condition of their admission to full and equal participation in the intercourse of civilized States" I have pointed out above the difference between the doctrine prevailing in America and that prevailing in England I have cited authorities which, I submit, are conclusive on the question of the relation of international law of England

As regards Oppenheim, I have already referred to the relevant passages

Hyde on International Law was next cited The title of the book is "International Law chiefly as interpreted and applied by the United States" The passage refers to a man being armed by a sovereign State It has no relevance at all to the question as to whether the subjects of a State taking up arms against the State have any right of belligerency

The case of Underhill vs Hernandez, United States Supreme Court Reports, Volume 168, page 250, was cited and an isolated passage was read which says that whether the political revolt fails or succeeds, still effectual war has been waged and acts of legitimate warfare cannot be made the basis of individual liability Apart from its being an American authority, and having no relevance to the question before the Court, it is necessary to consider what the case was and some salient facts thereof The third headnote of that case is as follows "This court is bound to take judicial notice of the facts that flagrant civil war existed in another country, that the revolution was successful, and that the revolutionary Government was recognized by the United States as the Government of the country and for information as to those facts this court may consult the Department of State" The action was brought to recover damages for the detention caused to the plaintiff by reason of the refusal to grant a passport and for the alleged confinement of the plaintiff to his own house The case was tried in the Circuit Court of the United States for the Eastern District of New York The acts which were alleged to have been wrongful had taken place in Venezuela

The facts stated above are sufficient to show how irrelevant the authority is

to the present question. There was no question in that case as between a State and its subjects. The second paragraph of the headnote of the case of *Ford vs Surget* 97 United States Reports, 594 is as follows: 'A destruction of cotton under the orders of the Confederate military authorities for the purpose of preventing it from falling into the hands of the Federal Army was an act of war upon the part of the military forces of the rebellion for which the person executing such orders was relieved from civil responsibility at the suit of the owner voluntarily residing at the time within the lines of the insurrection'. The defence was that at and before the time the alleged trespasses were committed, the people of Mississippi and of Virginia, North Carolina and South Carolina, Florida etc., had confederated together for revolt against the United States and within their territorial limits had entirely subverted the Government of the United States and in place thereof and within and for their territory and people had created a new and separate Government called the Confederate States of America having executive, legislative and judicial departments. From pages 605 and 611 of the Report it appears that to the Confederate Army was conceded in the interests of humanity and to prevent the cruelties of reprisals and retaliation such belligerent rights as belonged under the laws of nations to the armies of independent Governments engaged in war against each other. This is sufficient to show how irrelevant this case is to the question now before the Court. Further, as stated above, the Court is not concerned with what the law is in America. Reference has already been made to authorities and textbooks showing what the law is in England.

Blackston's Commentaries, Volume II were then cited. As regards this it is sufficient to point out that in *Halsbury Second Edition* Volume 6 page 504 in footnote (s) dealing with the statement of law set out in paragraph 629 it is mentioned that there was a wider view held originally concerning the incorporation of international law in the law of England and that such was also the view of *Blackston* but the modern more limited view was enunciated in *Regina vs. Keyn* and the view of the majority has since been upheld in *West Rand Central Gold Mining Co. vs. R.* (1905) 2 K. B. 301 which has already been cited above.

Hershey which has also been cited is also an American authority. The more appropriate reference should, I submit be to the English authorities on the point which have already been cited. 159 U.S. Reports page 113 stands on the same footing. The case reported in 1939 Appeal Cases page 160 is really not against the Prosecution. The passage cited from the judgment is as follows:

It must be always remembered that so far at any rate as courts in this country are concerned international law has no validity save in so far as its principles are accepted and adopted by our domestic law. There is no external power that imposes its rules upon our own code of substantial law and procedure. The courts acknowledge the existence of a body of rules which nations accept among themselves. On every judicial issue, they seek to ascertain what the relevant rule is and having found it they will treat it as having been incorporated into the domestic law so far as it is not inconsistent with the rules enacted by statute. This enunciation of law is in no way different from the propositions laid down in the authorities I have already cited.

The *British Year Book of International Law*, 1937 page 18 contains an article on some problems of the Spanish Civil War. It deals with the recognition by a third State of belligerent rights of insurgents and their parent State. Whatever the views of the author of this article may be, I have mentioned above the authorities on the question. It is submitted that it is beyond dispute that the recognition by a third State of belligerent rights in a conflict between a parent State and its insurgents is —

- (a) a matter of policy and
- (b) does not affect the parent State at all

The quotations from "Hansard" of the speeches made by various English politicians on the occasion of recognizing the belligerent rights of insurgents in other countries are not authorities on the point. If, as submitted by me, recognition by a third State is a matter of policy, the recognition by England of belligerent rights on the part of its insurgents against their own parent country does not affect the question whether, without such recognition the insurgents are entitled to any immunities. In fact, in some of the speeches it was actually stated that the act of recognition by England was based upon the interests of England and was necessitated by the impossibility of treating the insurgents as pirates. It is entirely incorrect to say that the same point arises for decision by this court. It is incorrect to say that it is not necessary that the Provisional Government of Free India should have been recognized by Great Britain. A third State may find it necessary or may choose to grant belligerent rights to the parent State as well as to the insurgents, but that does not mean that the insurgents are entitled to any immunity for their acts, so far as the parent State is concerned, unless the parent State has recognized or granted such rights. The illustrations given of Belgium and other countries are entirely out of place. Those countries were in military occupation. So too as regards France. There was a Free French State which refused to recognize the Petain Government. The proclamation of Eisenhower was directed against Germany and not against France. The Berlin reply is relevant to show that the recognition by other States is not binding upon a State which considered itself a parent State. It is not correct to say that the Prosecution asks the court to adopt the view of Germany on the point. In any event, no such proclamation affects the rights of a parent State against its insurgents if the parent State has not granted belligerent rights to the insurgents or has not recognized a Government formed in opposition to itself. The *communique* published by the Government of India and the statement made in the House of Commons are absolutely irrelevant to the question. Even if they were relevant, they do not amount to an admission of justification as regards the conduct of those who joined the I N A.

Many, if not most, of the considerations urged on behalf of the Defence may be appropriate to be urged before a legislative body which enacts legislation, but are entirely irrelevant before a court administering law.

Learned Counsel for the accused referred to the *communique* published by the Government of India and the statement in the House of Commons. This is not evidence in the case, but since mention has been made of it, I may be permitted to mention that, according to another statement made by His Excellency the Viceroy, 45,000 Indian prisoners of war did not join the Indian National Army and out of those 45,000, 11,000 lost their lives as a result of disease, starvation and murder. Twenty thousand prisoners of war joined the Indian National Army and the casualties from that Army were only about 1,500 — of course, all these considerations are irrelevant in this trial.

Much has been said on behalf of the accused as regards the activities of the Provisional Government of Free India. The defence witness, Mr S A Ayyar, who was in the Publicity Department of the Headquarters of the Indian Independence League in East Asia, said in his evidence that the Provisional Government used the machinery of the Indian Independence League as its own executive. This statement is by itself significant. He then goes on to say that the Provisional Government collected donations from Indians throughout East Asia and that in Burma the Provisional Government opened a National Bank of Azad Hind. The position occupied by Mr Subhas Chandra Bose was that of the President of the Indian Independence League and he took over the command of the I N A. Mr Ayyar then states that there was a school for training civil administrators. He further said that the Azad Hind Government in Malaya and Burma took care of

social welfare through the Indian Independence League branches in the matter of education, medical and other relief and relief of air raid victims. As regards himself he said that he was appointed to take charge of the Publicity Department in July 1942 and that later he became a Minister of the Provisional Government. As regards his own duties as a Minister of the Provisional Government, he said in his cross-examination that they were to give publicity to the activities of the Provisional Government and of the I.N.A. and to carry on propaganda directed to the people in India through the short wave radio, to arrange public meetings with the help of the machinery of the Indian Independence League and generally to do the publicity and propaganda activities of the Provisional Government. In further cross-examination he said "The Indian Independence League had various departments and the Provisional Government got its policy executed through the staff and the other machinery of the Indian Independence League. The Indian Independence League had various departments which were in the charge of secretaries—these were secretaries of departments—and whatever policy was laid down by the Provisional Government was put into actual execution by the secretary with his staff. From time to time instructions were sent from the Headquarters of the Provisional Government to the secretaries of the Indian Independence League branches. By policy I mean any decision taken by the Provisional Government, it was immediately communicated to the secretaries of the departments concerned by the minister and they put it into execution. In my own department, apart from the Ministry of Publicity and Propaganda, there was a Press Publicity and Propaganda Department of the Indian Independence League which was in the charge of a secretary and whatever we decided about propaganda for instance, of starting a new broadcast or a newspaper, was communicated to the secretary of the League and he took the necessary measures to carry out that decision. As an instance, in Burma when we decided to have an additional broadcast on the short wave radio I communicated the decision of the Ministry to the secretary of the Propaganda Department and he arranged for the additional broadcast session I know instances relating to my own department and I know other Ministers did the same. I cannot give you instances relating to other Ministries. In regard to my own Ministry I can give other instances. Secretary of Publicity Department of the League communicated to the secretaries in the branches of the League about carrying on propaganda in their territories. That is a typical example. Another instance was when we decided to hold a celebration of Netaji Bose Week, that is, on the arrival of Netaji Subhas Chandra Bose in Singapore and his taking over the presidency of the Indian Independence League. The Ministry communicated to the secretaries of the Publicity and Propaganda Department of the League and we issued instructions to the Secretary and he communicated these instructions to the League branches throughout Burma to observe that week. Similarly, the decision about the celebration of the first anniversary of the Provisional Government of Azad Hind in October 1944 was communicated to the secretaries, on the lines of the instructions given by the Ministry through the Secretary of the Propaganda Department. Similarly, when we celebrated February 4, 1944, when the I.N.A. first went into India on the Arakan Front, instructions were issued in the same way. I cannot think of any other decision as much immediately as far as the Propaganda Department was concerned." The above evidence is sufficient to give an idea of the scope and extent of the functions of the Provisional Government of Free India.

This witness also purported to say in his evidence-in-chief that he heard about the famine in Bengal and that Netaji Subhas Chandra Bose offered 100,000 tons of rice for relief of the famine in Bengal and that it was not accepted. In his cross-

examination, he said that the offer to send rice to Bengal was made through the radio to the people of India for information and to the British authorities in India so that they could consider the offer. This broadcast was, I believe, made either in July or August 1943. The offer was made by broadcast from Singapore. Rice was to be sent from any port in Burma, I believe. I could not tell you whether it was said on the radio that the rice was to be sent from any port in Burma but I believe that it could be sent from any port in Burma if the British authorities in India could vouchsafe safe conduct. The people of Burma were not starving for want of rice." This evidence is extremely unsatisfactory and by no means proves the allegation made, but even if it be true, it does not advance the defence case any further.

Col Loganadan in his evidence-in-chief said that he was present when the Provisional Government of Azad Hind was formed, that he was one of the Cabinet Ministers and that he was also the Director of Medical Services, I N A. In his cross-examination, he said "On the day on which exhibit 4F was proclaimed the functions of officers were as stated in the proclamation. I was the Director of Medical Services of the Provisional Government from the time the Government was formed until I left for the Andamans. Each officer performed his duties as laid down. As D. M. S. I carried out my functions in the Provisional Government. We held Cabinet meetings. Various details were discussed, e.g., about the National flag, the National Song, Marching Songs, Declaration of War, language to be used in the I N A, various things concerning the Indian Independence League branches and their functions, the recruitment of the Army, training and such other subjects. The subjects were inter-linked."

Mr Dina Nath said in his evidence-in-chief "I was a member of the Indian Independence League, Rangoon Branch. I know of the formation of the Provisional Government of Azad Hind. There was an Azad Hind Bank. I was one of the Directors of that Bank." Further on in his evidence-in-chief he said "There were branches of the Indian Independence League all over East Asia. The activities of the Indian Independence League so far as I personally know of them are these: they worked as an executive body to carry out the instructions of the Provisional Government of Azad Hind. Each branch had various departments dealing with various activities. For example, it had a Finance Department, a Recruiting Department, Training Department, Propaganda Department, Welfare Department, A. R. P. Section, Women's Section, and Boys Scouts Section. The League branches looked after the interests of the Indians and one of the main functions in this respect was to look after the absentee-Indian properties, to provide relief to the suffering people, to do A. R. P. service and each branch had also opened schools for the education of children." In cross-examination, he said "When I mentioned recruiting, I meant recruiting for the I. N. A. By propaganda I meant propaganda for the Provisional Government of Free India and I N A. When I mention protection, I meant protection against air attacks and helping the victims. When I mentioned women's section, I meant an organisation of women who gave their support to the movement and used to collect funds for the movement and enlist ladies for the Rani of Jhansi Regiment. The main job of Boys Scouts used to be welfare work during air-raids and other periods."

One may ask oneself the question as to what it was that the Provisional Government of Free India governed. It did not own nor was it in occupation of an inch of territory. Not a pie of tax or revenue was recovered. It was supposed to be a Provisional Government of Free India. Such activities, therefore, if any, as it pursued in Malaya cannot be said to be in exercise of any function as regards the Government of Free India. In fact, as the name itself indicates, it was supposed to come into existence as a Government if and when the Japanese, after conquering

India, handed it over to the Indians. It was a Government only on paper. There was in fact no Government.

As regards the defence application to the court to take judicial notice of a magazine called 'Stamp Collecting' published in London by a philatelist, it is submitted that the application cannot be entertained. Section 57 of the Indian Evidence Act says that the court shall take judicial notice of certain facts. The defence asks the court to take judicial notice of this magazine. There is no provision in the section for this. The document in question cannot be brought within any of the 13 items in Section 57. It is only if a fact of which judicial notice is requested to be taken comes within any of the 13 items and further on all matters of public history, literature, science or art the court may resort to appropriate books or documents of reference. Further the magazine in question is not an appropriate book or document of reference. Moreover, the application itself shows that what the defence want to do is to prove that the Provisional Government of Free India had got prepared to issue and were about to issue postal stamps of a particular character and that the designs were prepared under the direction of the Japanese. There is this further objection against the defence application and that is that the evidence, if admitted, would be hearsay of the worst character. The magazine says that its correspondent informs them that he has seen proof of impressions in the hands of the man who was responsible for the printing in Rangoon. If this is not hearsay it is difficult to imagine what is hearsay evidence.

As regards the recognition of the Provisional Government of Free India by Japan and her Allies, the evidence clearly establishes that the recognition by Japan was for its own object in order to enable it to win the war. It was Japan who made arrangements with Germany for getting Mr. Subhas Chandra Bose to come from Germany to Malaya. Mr. Shunichi Matsumoto in his cross-examination says as follows: "Japan made arrangement with the German Government and he (Mr. Subhas Chandra Bose) was sent to Japan. He was asked because they knew that he was working for the independence of India and he thought that it would help Japan's war aims and at the same time Japan wanted to help this man to obtain independence for India. The Japan Government did this at its own instance. It was done to help the Japanese war aims. As far as I am concerned, I understand that Mr. Subhas Chandra Bose came to Japan in about April 1943. I heard of the intended Provisional Government of Free India in or about April 1943. I think Mr. Subhas Chandra Bose remained in Japan for about one month on that occasion. I knew officially that the Indian National Government was going to be formed and that Mr. Subhas Chandra Bose was to be the head of it and that Japan would recognize and help that Government. I think the only reason why the Japanese Government wanted to recognize the Provisional Government of Free India was to help the Japanese war efforts. Japan had asked all her allies to recognize the Provisional Government of Free India and they did recognize it. Later on, the witness said that Mr. Bose asked Japan's allies through the Japanese Government to recognize the Provisional Government of Free India. He however, could not mention any document containing such a request. But whether it be so or not there is no doubt that it was Japan who got her allies to recognize the Provisional Government of Free India. He further says: 'I think that Japan recognized the Provisional Government because she thought that it was going to help her war effort. I think that Japan asked all her allies to recognize it because she thought that it would be a good thing for Japan.' In the re-examination of this witness, he said that Japan's war aim as regards India was to make it independent. This statement is of course, to be taken for what it is worth. Japan had to win the war first and defeat Great Britain and her allies. The professed desire of Japan to hand over

India to the Indians after it was conquered has also to be taken for what it is worth. It may be pointed out here that Mr Ayyar who was the Publicity Officer says "I am not aware that the Japanese ever made a formal clarification of the attitude of Japan towards India." What the Japanese did in countries conquered by them is a matter of history. As regards the other countries which are said to have recognized the Provisional Government of Free India, he had to admit and it is an undisputed fact that they were all in the Military occupation of Japan. The witness, of course, said that the countries were independent and not under Japanese control. He had to admit, however, that Japanese troops were in all these countries but he said they were not in occupation.

As regards Japan sending her Minister to the Provisional Government of Free India, he said that the decision to appoint a Minister was taken in November 1944 and that Mr Hachiya was appointed Minister and that he arrived at Rangoon in March 1945. In cross-examination this witness admitted that no letters or credentials were given to Mr Hachiya when he went to Rangoon. The credentials were not issued solely because the Government was provisional. He went on to say that at the instance of Mr Bose a decision was arrived at to issue credentials and they were issued and sent to Mr Hachiya about the middle of May. In fact, no credentials ever reached Mr Hachiya. The witness further said in his cross-examination that Mr Hachiya actually acted as Minister in this sense that he paid an official visit to the Foreign Minister of the Provisional Government and the Foreign Minister paid a return call to him. He admitted, however, that Mr Bose refused to have anything to do with Mr Hachiya because he had no credentials.

Mr Hachiya himself in his evidence said that he did not bring any credentials when he went to Rangoon and that he never received any credentials, but that he received a telegram stating that the credentials had been sent. According to this witness, he saw Col Chatterji twice or thrice and he saw Mr Ayyar once. He also admitted that Mr Bose refused to see him because he had no credentials. He said that he sent a telegram to Tokyo asking for his credential because he was told to do so by the request of Mr Subhas Chandra Bose which was conveyed to him through Col Chatterji.

As regards the alleged administration of liberated territory, the defence tried to make out in the evidence-in-chief of Lt-Col Loganadan that the Andaman and Nicobar Islands had been ceded by Japan to the Provisional Government of Free India. The version given by Col Loganadan in his evidence-in-chief was deliberately misleading. His own documents put to him in cross-examination showed how far from true were the statements made by him in his examination-in-chief. He said in his evidence-in-chief "In the Far Eastern Asiatic Conference, the Andaman and Nicobar Islands were ceded to the Provisional Government. On February 17, 1944, I went to Port Blair. After I had been there two to three weeks we had a ceremony at the Indian Independence League Headquarters at Port Blair. The Rear Admiral in charge as well as the Army Commander there, one Major-General, attended the function and the Andaman and Nicobar Islands were handed over to me as Chief Commissioner. Mr Subhas Chandra Bose appointed me Chief Commissioner. I took charge of the Administration two or three weeks later at the time of the function which I have described. Major Alvi was in charge of the Education Department in the Andaman and Nicobar Islands. Lt Subha Singh was in charge of Revenue and Finance and Lt Iqbal was in charge of Police. With the help of the local administration, I began to administer these Islands. I administered these islands as long as I was there, that is, until September 1944, when I returned to Singapore."

In cross-examination, when it was put to him that the was handed over to him was the Education Department, he tried to make out that it was because he refused to take over the other departments unless the Police Department was also handed over to him. He admitted that the Provisional statement that the Andaman and Nicobar Islands were cut off he did not remember Government of Azad Hind was a broadcast from Tokyo, but Bose gave a letter to the exact wording of the broadcast. Mr Subhas Chandra Bose dated January 6 this witness (Exhibit 5B) appointing him Chief Commissioner on 16 1943 from the 1944. At the same time he gave him a letter dated November 16 1943 from the Japanese Vice Admiral to Mr Subhas Chandra Bose. In this letter (G 5E) it was stated as follows 'We are already going ahead with preparatory measures necessary for a speedy and smooth transfer of the Islands. In accordance with a statement made by the Prime Minister, a Governor is to be appointed after the completion of the transfer. It is to be understood that persons of some such title as the transfer an official of the Provisional Government bearing should be despatched to Chief Commissioner for the Andaman and Nicobar Islands, under the direction co-operate fully in the military administration of the Islands with this letter Col of the Naval Commandant there. When confronted by Mr Bose to him Loganadan said that certain verbal instructions were given they were that when asked what those instructions were, he said they were to take over the whole consistent with the local difficulties he should as soon as possible Loganadan said as of the Islands. Later on, in his cross-examination, Loganadan said as follows 'The word minimum means civil administration hands of Jochi and this was Jochi. The civil administration was in the hands of Jochi. The military and naval administration was in the hands of the Rear Admiral. As regards the self sufficiency programme, I went to the villages and gave lectures. Apart from running schools and the self sufficiency programme, my administration comprised nothing else. The Education Department about 30 or 33 schools. The funds for running the schools were not repaid by the Japanese to me. All these sums would come to per month time I left. I have not worked out how much this sum was there and they continued to work, if a vacancy arose, I filled it. Regarding the self sufficiency programme, I went about from village to village urging the peasants to grow more food. Regarding other departments if you put that way that is, taking charge of departments. The purposes the Provisional administration' He admitted that except for domestic use of the administration of the Government of Azad Hind incurred no expenses with regard to the Japanese there was these islands, and that other than the loans received from the Japanese there was no other expenditure by the Provisional Government of Azad Hind.

The reports made by the witness to Mr Subhas Chandra Bose from time to time show that it was not true that the other departments were not taken up because the Police Department was not transferred.

The witness also admitted that the Administrative and Consultative Committee were in existence when he came. He also admitted that the Japanese had a Supply Department and that the self sufficiency programme was carried out under instructions of the Japanese Supply Department. The witness also admitted that if he wrote anything which was unpalatable to the Japanese they would either suppress it or ask him to alter it. He admitted that when he was in the Andamans gross atrocities were committed by the Japanese in spy case. If he said he was aware of that but he was unable to remedy the matter.

The witness admitted that it was true as a general statement that with re-

feared to come near any of them and they were not anxious to expose themselves to be seen with them.

When Col Loganadan left the Andaman Islands, Major Alvi wrote a letter to him (Ex 5/c) in which he stated, among other things, as follows " I do not know how I can maintain the prestige of the Provisional Government here without either commanding the least respect or confidence of the people or being able to render any co-operation to the Government, for if I cannot help the people in the least in their misfortunes I cannot expect to work them into patriotic frenzy and make them go all out to help the Government war effort " He also stated that there was absolute insecurity of life and liberty and that if the Provisional Government was merely to watch but not to open its mouth where the question of spying was concerned, he could not stick to a place where he was expected to watch without emotion and without powers of interference in the execution of men whom he believed to be innocent

In the report which Col. Loganadan made to Mr Subbas Chandra Bose (Ex. 5/c), he stated, among other things, that the propaganda required by the Japanese Government was carried out and that any propaganda for the Independence movement was ineffective It further said that the total amount of work done by the staff was so little that their absence would not be missed. "The higher authorities say that we have been helpful but to what extent I cannot conceive The subordinates think and feel and say that we are a hindrance to their work This is applicable chiefly to the Police Department The public have lost confidence in us as we failed to lessen their sufferings The public feel that the withdrawal of the Provisional Government may improve their lot as its intervention, if any, is likely to stiffen the attitude of the local authorities "

This report, according to the witness, was handed over by him to Mr. Subhas Chandra Bose in December 1944

The witness was asked whether, before he left the Andamans, he did not tell the Vice-Admiral and the Civil Administrator that he was going to recommend the withdrawal of the Provisional Government from the islands He denied it He also denied that he sent any telegram himself to Mr Subhas Chandra Bose after his arrival in Singapore recommending the withdrawal of the Provisional Government from the Andaman and Nicobar Islands

He was then confronted with an entry in his diary (Ex 5/c) under the date, October 25, 1944, in which he had made a copy of the telegram sent by Col Bhonsle to Mr Bose to the effect that Col Loganadan was strongly of opinion that the entire Provisional Government staff should be withdrawn from the Andaman Islands as they had not got any useful work to do there Col. Loganadan then said that a copy of the telegram was shown to him by Col Bhonsle after the telegram had been despatched, and that he did not quite approve of the wording of the telegram and that he would have sent it differently He said that it was not correct that he caused the telegram to be sent He said that the words which he did not approve of were, " as they have not got any useful work to do here " He added that he did not think it worthwhile taking steps to correct the false impression on a telegram which had already been sent

It was argued on behalf of the defence that Col Loganadan in his evidence said that he had re-named the Andaman and Nicobar Islands and that he was not cross-examined on this point Surely, it was not necessary to cross-examine the witness on a statement made by him which is contradicted by the documents produced by him. All the reports which Col Loganadan made from the time of his arrival in the islands up to the time of his departure from that place are signed by him as Chief Commissioner of the Andaman and Nicobar Islands The report which

he made on December 23 1944 also refers in terms to the Andaman Islands and is signed by him as Chief Commissioner of the Andaman and Nicobar Islands

My submission is that it is abundantly proved that Japan never ceded the Andaman and Nicobar Islands or indeed an inch of any other territory to the Provisional Government of Free India, nor did Col. Loganadan or anybody else on behalf of the Provisional Government of Free India administer it. As a matter of fact, Japan had no right to cede any territory, even if it wanted to. The rights of an army in occupation are thus set out in Oppenheim's International Law, Vol. II page 341 Par 169 'As the occupant actually exercises authority and as the legitimate government is prevented from exercising its authority the occupant acquired a temporary right of administration over the territory and the inhabitants, and all legitimate steps taken by the exercise of rights must be recognized by the legitimate government after occupation has ceased. But as the right of an occupant in occupied territory is merely a right of administration, he may neither annex it while the war continues, nor set it up as an independent State nor divide it into two administrative districts for political purposes. Moreover the administration of the occupant is in no wise to be compared with ordinary administration, for it is distinctly and precisely military administration. In carrying out the occupant is totally independent of the constitution and the laws of the territory, since the occupation is an aim of warfare, and the maintenance and safety of his forces and the purpose of war stand in the foreground of his interest and must be promoted under all circumstances and conditions. But although as regards the safety of his army and purpose of war the occupant is vested with an almost absolute power as he is not the sovereign of the territory he has no right to make changes in the laws or in the administration other than those which are temporarily necessitated by his interest in the maintenance and safety of his army and the realisation of the purpose of war. On the contrary, he has the duty of administering the country according to the existing laws and the existing rules of administration. he must ensure public order and safety must respect family honour and rights, private property religion and liberty. It is clear that these and other obligations of the occupations of the occupant cannot be avoided by dint of the additional illegality of prematurely annexing the occupied territory'

As regards the evidence given by Col. Loganadan he could not have forgotten the substance of the various reports which he made and the contents of the letter which Major Alvi wrote to him and the report which he made to Mr. Subhas Chandra Bose in December 1944. He attempted to give an entirely misleading impression to the court in his evidence in-chief about the administration of the Andaman and Nicobar Islands by him. His attempt to get out of the fact that the letter of the Japanese Minister to Mr. Subhas Chandra Bose definitely stated that in accordance with a statement made by the Prime Minister a Governor was to be appointed after the completion of the transfer and that it was to be understood that pending completion of the transfer an official of the Provisional Government bearing some such title as Chief Commissioner for the Andaman and Nicobar Islands should be despatched to co-operate fully in the Military administration of the Islands under the direction of the Naval Commandant there was futile.

He attempted to make out that Mr. Bose actually gave him greater authority than what was contained in the letter of the Japanese Minister. Ultimately however when asked what those instructions were, he said that the instructions given by Mr. Bose were that consistent with the local difficulties he should as soon as possible take over the whole of the islands and that the full instructions were to take over the Islands as soon as possible. The witness in his evidence-in-chief tried to make out that his reports were not censored by the Japanese and that he

gave them in sealed covers to the Japanese authorities for being transmitted to Mr Subhas Chandra Bose. He had subsequently to admit that all his reports were seen and that if they contained any passages which were not palatable to the Japanese they would either withhold the report or ask him to alter the objectionable passage. He admitted that, in fact, from one of the reports a paragraph had to be deleted and that that paragraph was never communicated to Mr Bose. His statement that he refused to take over the other departments unless the Police Department was transferred to him is also shown to be incorrect by the report which he himself made. He denied in the first instance about a telegram having been caused to be sent by him to Mr Subhas Chandra Bose for withdrawing the so-called Provisional Government from the Andaman and Nicobar Islands. When confronted with the entry in his diary all the explanation that he could give was that he did not quite approve of the wording of the telegram and that he would have sent it differently. He said that the words of which he did not approve were "as they have not got any useful work to do there!" He said that he did not think it was worthwhile taking steps to correct the false impression on a telegram which had already been sent.

The story of the Andaman Islands having been ceded by the Japanese to the Provisional Government of Free India and having been administered by the latter having been exploded, the defence next tried to make out that the Provisional Government of Free India administered a portion of Burmese territory known as Ziawadi Estate. The two witnesses called in connection with this part of the case were Mr Dina Nath and Mr Shiv Singh. According to Mr Dina Nath, this estate was handed over to the Provisional Government of Azad Hind and their representative administered it. In his evidence-in-chief this witness said "This representative was appointed by the Revenue Ministry of the Azad Hind Government. There was one big sugar factory on the estate. There were yarn factories, blanket making factories, gunny-making factories, hospitals, and in addition to them cultivation was being carried out there. The population was about 15,000 mainly consisting of Indians. The Indian National Army had a base there. They had hospitals and these factories were also being run by the Indian National Army there. They had training camps also there. The produce was all handed over to the Provisional Government to be utilized by them in the manner they thought best." In cross-examination, he said that the estate belonged to a man named Mr Parmanand, but he did not know personally who was the owner of that estate, and that it was handed over to the representative of the Provisional Government of Azad Hind by Mr Parmanand. He said that at a public meeting at which Mr Subhas Chandra Bose spoke and appealed for funds, Mr Parmanand came up and announced "I formally hand over the estate to the Provisional Government of Free India today." Mr Parmanand was Minister of Supplies. He added that after this announcement the products from that area were going to the Provisional Government only and the factories there were also run under the control of the Indian National Army. He admitted that the estate was in Burmese territory and he said that the estate was handed over as well as its revenue, income from factories, etc. He understood that it was handed over for the purposes of administration and for looking after the production. He wound up by saying "All that the I N A did was to sell the produce and whatever produce there was they sold it. The I N A also arranged for further production. As I have said before, factories were also set up and they administered that area. I have no personal knowledge of the administration of that area."

There is nothing to prove that even the estate itself was handed over to the Provisional Government of Free India. What really happened was that the income

of the estate was donated to the fund of the Provisional Government of Free India, but even if the estate itself was handed over it did not amount to an administration of liberated territory by the Provisional Government of Free India. The witness Mr Dima Nath, said that he did not know what happened to the estate afterwards.

The next witness called on this point was Mr Shriv Singh. He put forward a ridiculous story of the estate having been occupied by the Provisional Government of Free India and having been administered by it. According to him, there had been agreement between the Japanese Government and the Provisional Government of Free India that the Provisional Government of Free India was to be the master of all that property which belonged to other owners who were not present. Apart from the inherent absurdity of this story and its being contrary to the version given by Mr Dima Nath, the evidence of this witness is of no value at all. He said that he volunteered to fight for the Provisional Government of Free India in August 1942. He said that when he went to the Bangkok Conference he belonged to the Indian National Army. Later on he tried to show that he joined the Indian National Army from the time the Japanese recognized the I.N.A. and the Provisional Government of Free India, and that that was in September 1943. He admitted that he was in the I.N.A. even before also but that he did not start work till September 1943. He further admitted that he went to Rangoon in September 1942 as one of a special party who were sent under Col. Gill, and that he actually proceeded to Arakan to reconnoitre and that he returned and made his report. This witness after joining the Indian National Army gave information about it to the British Army as regards the whereabouts of the I.N.A. He made a flimsy effort to wriggle out of this by saying that in so doing he did a trick to save the Ziawadi estate, the I.N.A. and the Provisional Government. It would be a waste of time and energy to say anything more about the evidence of this palpably false witness.

It was then attempted to show that when the I.N.A. entered Indian territory they administered the area occupied by them. The area referred to is the portion of the Manipur State which is on the border of Burma. The source of information of this witness, viz., Capt. R. M. Irahad is according to him, reports from Vishnupore area which was commanded by Capt. S. A. Malik.

If the defence wanted to prove this fact they could have called better evidence than the evidence of a witness who deposes to facts from his recollection of certain reports which he saw. The declaration which he deposes to having been seen by him only stated that the administration in the liberated areas would be carried out under the head of the Provisional Government of Azad Hind. All that he says in his evidence-in-chief about the alleged administration of the area is that he came across official documents about the administration carried out on the Manipur Front and that at the time when operations were being carried on in Manipur Area the administration of the liberated area was being carried on by Major M. Kiani, No. 1 Division Commander, that there were also units of Azad Hind Dal at Moreh and that these units came under the orders of No. 1 Division Camp. He further said that in his official capacity as G. I. he received reports from Vishnupore area which was commanded by Capt. S. A. Malik who came under the command of No. 1 Division Camp about the administration carried out by him and by units of the Azad Hind Dal in Vishnupore sector.

In cross-examination the witness could give only two instances of the administration about which he deposed. He said that Capt. Kiani operating on the left of the road had to settle some land dispute among the Manipuris in that particular area. As regards the other incident, all that the witness said was that he remembered the instructions given to the Azad Hind Dal

Unit for collection of supplies, giving medical aid, etc., to the villagers. The witness admitted that at the time when Palel was besieged there were British troops in the operational areas of Manipur and that fighting had never ceased in Manipur and that the areas which had been liberated from Moreh to Chimal—a little this side of Palel—were administered by the I. N. A. He said that there were certain areas where operations had not actually been carried out, there were certain areas where operations had been or were being carried out and there were certain areas where operations had ceased. In other words, where Japanese and the I. N. A. were in military occupation. He added "That is what I meant by liberated areas." Finally, he said "There was, as I have said before, military administration in those particular parts of Manipur and Vishnupore area where the I. N. A. were operating." As a matter of fact, the Azad Hind Dal, which consisted of a small body of persons trained for civil administration, was, according to the prosecution case, never in Manipur and never went beyond the limits of Burma. Proof of this fact appears in Exhibit 5-L which is a letter dated June 21, 1944, by Subhas Chandra Bose to Col Loganadan. Paragraph 13 of the letter is as follows: "We have started a new organisation called the Azad Hind Dal. It is a semi-military organisation consisting of civilians and administrators who will be going to India in the wake of our victorious armies." This letter clearly shows that up to June 21, 1944, the Azad Hind Dal had not gone into India. It will be recollected that from about the end of June or beginning of July, 1944, the Japanese and the units of the I. N. A. that were there began to retreat from the Manipur area.

The evidence given by Capt. Irshad is coloured by a desire to make it favourable to the defence. In his evidence-in-chief he said that Col Hunt had said "From now on you belong to the Japanese Army and you will obey their orders as you have been obeying our orders." In cross-examination he admitted that those were not the words used by Col Hunt and that in the statement which he made to the defence what he said was "Now you are prisoners of war and I hand you over to the Japanese authorities." His statement about having heard that the Congress was hostile to the Japanese is also without foundation. His statement about Capt. Sahgal having joined the I. N. A. in August 1942 is also not correct. There is abundant evidence to show that Capt. Sahgal joined the I. N. A. long before August 1942 and actually made speeches persuading other prisoners of war to join the I. N. A. He stated that he was not aware of any coercive methods used in making prisoners of war join the I. N. A. This is entirely inconsistent with another statement in his evidence-in-chief to the following effect: "It was also decided that the recruitment for the 2nd I. N. A. should be entirely voluntary." He could not explain why such a decision should be taken if previously the recruitment was voluntary. The explanation which he attempted to give is lacking in sincerity. He admitted that the alternatives before the Indian soldiers who were prisoners of war were either to join the I. N. A. or to be treated as prisoners of war. He however would not admit that the treatment by the Japanese of prisoners of war was brutal. He would not go beyond stating that the treatment was unsatisfactory and that the Japanese were not treating the prisoners of war according to international rules and regulations. He admitted that in February officers were separated from the men but he suggested that he did not know the object of doing so. He denied having seen the pamphlet "Our Struggle" (Exhibit 5A). His statement that he did not know what happened to Capt. Mohan Singh after he was arrested can hardly be accepted. The statements, therefore, of this witness even as far as they go can hardly be taken as carrying any weight.

It was then attempted to show that there was something like a State Bank

called the National Bank of Azad Hind. In cross-examination, witness (Mr Dina Nath) stated that the bank was registered in Rangoon like any other public bank and that there were shareholders in the bank. The capital of the bank was Rs 50 lakhs. He further stated that the bank acted as the bankers to the Provisional Government just as it acted for its other constituents. He also said that all the money was in Japanese occupancy notes and that there was only about Rs 50 to 60 thousand in British currency.

An attempt was made to rely on the evidence of Col. Kitson and Ghulam Mohammed in support of the contention that Capt. Sahgal sent a note saying that he and his party wished to surrender as prisoners of war and that as this offer was accepted there was a recognition of belligerency so far as he is concerned and he is not liable to be tried for the offence of waging war against the King. So far as the evidence of Col. Kitson is concerned, it is quite clear that in the conversation which he had with Capt. Sahgal Capt. Sahgal told him that he had fought for what he considered to be right and that now that he had lost he was prepared to take the consequences. Col. Kitson then told him that he would be marched off to Brigade Headquarters on the morrow and that he would be sent back and disposed of by Brigade or Division but that his disposal had nothing to do with him after he had sent him off. In any event, it cannot be suggested that the leading Company Commander to whom Capt. Sahgal surrendered had or could have any authority either to grant belligerency or to recognize belligerent rights. So far as the evidence of Havildar Ghulam Mohammed is concerned it was suggested in his cross-examination that there was something more written in the letter. No such suggestion was made to Col. Kitson and he was not cross-examined by Counsel for the defence. As a matter of fact, according to the evidence of Ghulam Mohammed after Capt. Sahgal and his party had decided to surrender and before they actually surrendered Capt. Sahgal asked the officers to communicate to all the men about the decision which had been taken and ordered the pickets on the hills to withdraw.

An attempt was also made to rely upon what happened in Rangoon when the British Army entered it in the beginning of May 1945 in support of the defence plea of recognition. It is difficult to see how any such contention can be urged. It was admitted that some days before the British entered Rangoon the Japanese Army had evacuated Rangoon and it is in evidence that Mr Subhas Chandra Bose while leaving Rangoon told Capt. Irshad and Col. Loganathan that he was leaving the Indian National Army in Rangoon for the sole purpose of looking after Indian civilians in Rangoon. There was no question of resisting the British entry. The evidence also makes it clear that when the Japanese evacuated Rangoon they withdrew the sentries from the prison in which the British prisoners of war were kept and according to the evidence of Capt. Irshad and the documents put in during his examination, Wing Commander Hudson who was the senior officer among the Allied prisoners of war there, gave him certain orders and Capt. Arshad implemented those orders but before the orders were carried out the British Army arrived in Rangoon. In fact according to Capt. Irshad himself Brig. Lander said that he was not in a position to accept Capt. Irshad and the other I.N.A. troops as prisoners of war.

In the statements made by the accused an attempt has been made to give an explanation of their conduct in joining the I.N.A. and waging war against His Majesty the King. Waging war against His Majesty the King is an offence on the part of a person even if he is compelled to do so by threats. Section 91 of the Indian Penal Code which creates a general exception in respect of an act

ed by threats excludes murder and offences against to which a person is compelled exception Waging war against His Majesty the the State from this general Section 121 of the Indian Penal Code is an offence King which is an offence unde conceivably be circumstances in the commission against the State There might palliative of the offence but if war has been waged of an offence, which may be a on or explanation can be a defence to the charge in terms of the section, no reasons of all the accused it is attempted to be under Section 121 In the statements of war were left in the lurch to face the consequences of the surrender by themselves. This is not true. It was under the orders of the Japanese authorities that the British prisoners of war were separated from the Indian prisoners of war expected to receive or in fact received that the British prisoners of war panese than the Indian prisoners of war The better treatment from the Japanese is not suggested and it cannot be suggested statements of the accused attestation of what happened at the Fairair Park meeting allegiance to the Crown by reys in his statement, Col Hunt on that occasion As Capt Shah Nawaz Khan said the British Government hand you over to the said "Today I on behalf of the British Government hand you over to the Japanese Government whose order the orders of the Japanese authorities It is Of course, Col Hunt said this could have been said on an occasion like this, difficult to conceive what else rendered the whole army came under the orders When the Singapore army surrendered all the prisoners of war had to obey the orders of the Japanese Government and that time Even if no statement had been made of the Japanese authorities from and the result of the surrender would have been by Col Hunt, the consequences justification for saying that the Indian prisoners exactly the same There is no little by the British to the Japanese The British of war were handed over like capturrendered. prisoners of war were similarly surrendered.

The very fact that immediately after the surrender they were asked to join the I N A shows that the idea of making the Indian prisoners of war to fight against the British as members of the I N A had been conceived and put into train before the fall of Singapore The evidence shows that at the meeting at Fairair Park there were Indian prisoners of war wearing arm bands with the letter F on them F stands for Fujiwara Kikan Capt Shah Nawaz Khan says in his statement that up to the end of May 1942 he was against the I N A coming into existence This is in consistent idea of the organization of the prosecution which is to the effect that Capt Shah Nawaz delivered lectures even before April 1942 asking other prisoners of war to join the I N A Capt Shah Nawaz Khan further says that from June 1942 to July 1943 he decided in the interests of his men to volunteer for the I N A with full determination that he would do everything possible to break it or to sabotage it from within as soon as he felt that it would submit to Japanese exploitation This is part in winning other prisoners of war from Shah Nawaz Khan took an active part Capt Sahgal says in his statement that he their allegiance to the Crown and that up to that time he was in the non-joined the I N A in August 1942 No question was put to any of the volunteer camp in Tangan aeris prosecution witnesses suggesting the

Lt Dhillon admits that he co-operated with Mohan Singh in the organization of the I N A till June 29, 1942, when he became ill and had to go to the hospital He says that on receiving the assurance that Netaji Subhas Chandra Bose would come to lead the movement, he decided to continue in the second N A after December 1942 statements of the accused that their object in

It is also suggested in the

joining the I N A. was that they did not wish indiscriminate looting and raping taking place in India as had happened in Malaya after the Japanese entered the country. The evidence, however clearly establishes the fact that all the accused did everything they could to enable the Japanese to conquer India. In fact, they insisted on the Japanese authorities giving them an active part in the fight at the front. It is also significant that, even after the Japanese began to retreat from Manipur and Kohima, the accused kept on fighting in Burma and in fact were anxious that the Japanese should overrun India.

The explanations sought to be given of their conduct in their statements are inconsistent with their own case that the I N A. was raised in order to drive the British out of India, in other words, to help the Japanese to conquer India. The entries in the diaries of Capt. Shah Nawaz and Capt. Sahgal are significant on this point. They have been read to the Court more than once and I will not read them again.

It was argued that so far as the accused are concerned, there was a question of dual allegiance. This argument overlooks the wording of Section 121. The offence mentioned in that section is that of waging war against the Queen. The word 'Queen' is defined in Section 13 of the Indian Penal Code as denoting the Sovereign for the time being of the United Kingdom of Great Britain and Ireland. The cases of the King vs. Casement (1917) 1 K. B. 98, and the King vs. Lynch (1903) 1 K. B. 444, give a complete answer to this contention. The case of Jeager the Attorney-General for Natal (1907) Appeal Cases, 326, is a complete answer to the contention that the accused no longer owed allegiance because the Crown failed to protect them. As a matter of fact the British Government did succeed in protecting India against the Japanese. The fact that up to a certain stage the fortunes of war were against Great Britain can make no difference in the question. It is relevant to point out in this connection that the officers and the men of the Indian Army who when they were prisoners of war, joined the Indian National Army at first but subsequently did not agree to continue in it after December 1942 were to revert to their position as prisoners of war. Not only that, but even as regards those men who were willing to join the Indian National Army but who were in the category of B and C men who could not be absorbed in the Indian National Army it was announced that they would be reverted to prisoners of war and sent to those camps. I am referring to exhibit SS which is a document signed by Capt. Shah Nawaz Khan and addressed to the Headquarters, Indian National Army, and is dated May 27 1943. It states *inter alia* as follows:

'Besides this the Indian National Army has approximately 2,000 men under-strength and up to date it has been found very difficult to fill up this large gap. All Unit and Formation Commands are, therefore, requested to give their best co-operation and support in overcoming this difficulty. There is also a likelihood that all category B and C men who cannot be absorbed in the Indian National Army will be reverted to prisoners of war and sent to those camps. It is fully realized that it is a very hard and regrettable decision nevertheless it may have to be resorted to.

In exhibit which is a document from Mr. Rash Behari Bose, President of the Council of Action, and addressed to officers and men of the Indian National Army, it is stated as follows: 'Some of you may be anxious to know what will happen to those rejected from the Indian National Army. Unfortunately, I shall have no control over those who deliberately chose to quit the Indian National Army at the present juncture. I cannot speak for the Japanese, nor say in what manner or at what place they will be employed by the Powers whose prisoners they choose

to be." It is also interesting to know that in Exhibit AA which is a Special Order dated September 1, 1942, and refers to the promotion, *inter alia* of the accused, their old rank and unit is mentioned. Even as late as March 26, 1944, in a document signed by Capt Shah Nawaz Khan headed 'security' and which gave the allotment of personal numbers to the officers, the Indian Army Units of the officers are also mentioned.

As regards the contention of the accused that they were entitled to throw off their allegiance to the Crown and that they were justified in doing so, because they were fighting for the freedom of their country, it is relevant to consider some cases which throw light on the subject. In *King vs. Casement* (1917) 1 K B page 98, the report of the case shows that Sir Roger Casement circulated a leaflet which said as follows "Irishmen! Here is a chance for you to fight for Ireland. You have fought for England, your country's hereditary enemy. You have fought for Belgium in England's interest, though it was no more to you than the Fiji Islands. Are you willing to fight for your own country with a view to securing the national freedom of Ireland? With the moral and material assistance of the German Government, an Irish Brigade is being formed. The object of the Irish Brigade shall be to fight solely for the cause of Ireland and under no circumstances shall it be directed to any German end. The Irish Brigade shall be formed and shall fight under the Irish flag alone. The men shall wear a specially distinct Irish uniform and have Irish officers. The Irish Brigade shall be clothed, fed and efficiently equipped with arms and ammunitions by the German Government. It is to be stationed near Berlin and be treated as guests of the German Government. At the end of the war, the German Government undertakes to send each member of the Brigade who may so desire to the United States of America with necessary means to land. The Irishmen in America are collecting money for the brigade. Those men who do not join the Irish Brigade will be removed from Lumburg and distributed among other camps. If interested, see your company commanders. Join the Irish Brigade and win Ireland's independence." Sir Roger Casement circulated the said leaflet among British subjects who were prisoners of war of the Germans. In delivering judgment Chief Justice Lord Reading referred to the case of William Cundell which was decided in 1812. It was the case of persons who were confined in the Isle of France and who had there foresaken their allegiance to the King and transferred it to the French. In that case a number of British sailors and marines were confined as prisoners of war in the Isle of France. The prison being much crowded was greatly incommoded with dirt and vermin and there being no way of escaping from such inconvenience but that of desertion every art was practised by their keepers to induce the unhappy prisoners to enter the French service. Fifty men among whom were Cundell and Smith had not virtue enough to resist the temptation on the one hand, and the hope of escaping from distress and filth on the other. They forgot their country and their allegiance and put on the enemy uniform acting as sentinels over those who were so recently their companions in captivity. The traitors continued to do the duty with the French until the surrender of the Island to the British forces when Cundell and Smith with ten others positively refused to accompany the enemy and threw themselves upon the mercy of their country, having immediately surrendered to the English, while 38 others marched off to old France. These culprits were then transmitted to England and a Special Commission was issued for their trial. They were convicted and hanged. The Chief Justice, in giving his judgment, said "I cannot doubt that before the statute, it was treason in a British subject to join the force of an enemy abroad, and that if a British subject had joined the forces of an enemy abroad at war with the country and he afterwards returned or was brought back to the country he could be tried here for that offence. When one has regard to

the nature of the offence of high treason I think it is obvious, it must have been so. Foster in his Crown Law page 183 thus describes the offence of high treason. High treason being an offence committed against the duty of allegiance it may be proper to consider from whom and to whom allegiance is due. With regard to natural born subjects there can be no doubt they owe allegiance to the Crown at all times and in all circumstances. This is what we call natural allegiance in contradistinction to that which is local. Natural allegiance is found in the relation every man standeth in to the Crown considered as the head of the society whereof he is born a member and on the peculiar privileges he deriveth from the relation, which are, with great propriety called his birth right. This birth right nothing but his own demerit can deprive him of it is indefeasible and perpetual, and consequently the duty of allegiance which ariseth out of it and is inseparably connected with it is in consideration of law likewise inalienable and perpetual. Justice Darling in his judgment after referring to Cundell's case said that he had violated his allegiance which followed him which remained with him wherever he might be outside the King's dominion, and by which he was bounden even when he was a prisoner of war. In *King versus Lynch* (1903) 1 KB page 444, the accused was a British subject born in Australia. During the Boer War he made a declaration of willingness to take up arms for the South African Republic where he was residing in order to maintain and defend its independence and he became a fully enfranchised burgher of the South African Republic. On March 22 1900, he published an address to Irishmen inciting them to assist the enemy and he commanded an armed body of men called the second Irish Brigade with intent to co-operate with the military forces of the enemy. He actually fought on behalf of the enemy against the British troops. The defence was that he had transferred his allegiance during the war by becoming naturalised in an enemy country. It was held that he could not do so during the time of war. In his judgment, Justice Wills said at page 459. With regard to the rest of this case it is sufficient for me to say that throughout the argument I have never been able to comprehend how an act of treason could give any sort of rights or could exempt a person from criminal responsibility for subsequent acts of treason. If Mr Sheeny's argument was sound an army might, if each member of it were individually to accept letters of naturalisation from the enemy desert in the hour of battle without rendering any of its members liable to the penalties of treason. So extravagant a conclusion shows conclusively that the contention cannot be supported.

In *Jaeger vs. Attorney General of Natal* (1907) Appeal cases 326 the defence against a charge of treason which was sought to be raised was that when the protection of the State ceased its counter-part, namely, the duty of allegiance ceased also. This was a case of a resident alien within British territory owing allegiance to the Crown. He was a burgher of the South African Republic and when the British forces had retired from Waschbank to Ladysmith and the Boer forces occupied that part of Natal in which Waschbank was situated he joined the Boer forces and aided and assisted them both as Commandant and as a Commissioner and Justice of Peace. In giving judgment their Lordships of the Judicial Committee of the Privy Council said "Their Lordships are of opinion that there is no ground for this contention. The protection of a State does not cease merely because the State Forces for strategic or other reasons are temporarily withdrawn so that the enemy for the time exercises the right of an army in occupation. On the contrary when such territory reverts to the control of its rightful sovereign, wrongs done during the foreign occupation are cognisable by the ordinary courts. The protection of the sovereign has not ceased. It is continuous though the actual redress of what has been done amiss may be necessarily postponed until the enemy forces have been expelled."

Learned Counsel for the Defence put forward two points of distinction (1) that they were cases of individuals charged with treason under the English law and that they were not members of an organized body, and (2) that in those cases there was no question of double allegiance. I have dealt with both these points in my address. It was further contended that in India there is no such thing as treason and that the whole law is codified in the Indian Penal Code. Treason, never theless, is an offence against the State. High treason has been defined as an offence committed against the duty of allegiance. The essence of waging war against the King is that the offence is against the duty of allegiance. It is an offence against the State. The principles laid down in the cases which I have cited are applicable to the cases of waging war against the King.

The only other case to which I wish to refer on this subject is *Aung Hla vs King Emperor*, I L R 9 Rangoon 494. That was a case where the accused was charged with the offence of waging war against the King. In delivering the judgment, Chief Justice Page at page 413 said: "We propose, therefore, to make clear what is meant by the word 'wage war' in Section 121 of the Indian Penal Code." In his judgment, he quoted from 21 State trials pages 644, 645, from the charge of Chief Justice Mansfield to the jury which deals with two kinds of waging war, one against the person of the King and the other against the Majesty of the King, in other words, against him in his Regal capacity, where it was pointed out that it was treason to attempt to attain by force and violence any object of a general public nature. The learned Judge then quotes from the charge of Lord President Hope in *Rex vs Wilson*, 21 St Tr 1353: "If they rise to effect a general public purpose by force and numbers that object renders the rising treason, be the numbers great or small." The learned Judge then quoted from the charge of Justice Tindal in *R vs Frost*, 4 St Tr at page 93: "An assembly of men armed and arrayed in a war-like manner with any treasonable purpose is a levying of war although no blow be struck. And enlisting and drilling and marching bodies of men are sufficient overt acts of that treason, without coming to a battle or action. And if this be the case, the actual conflict between such a body and the Queen's forces must beyond all doubt amount to levying war against the Queen—not necessarily that it should be accompanied with the pomp and pageantry of war." The learned Judge then quotes from page 216 of Foster's Crown cases that joining with rebels in an act of rebellion or with enemies in acts of hostility will make a man traitor.

It is submitted that, notwithstanding all that has been said about the formation of Provisional Government and the immunity which it is supposed to have given to the accused what the accused did was nothing else than joining the enemy in acts of hostility against His Majesty the King.

It was argued that there was no charge of desertion or any breach of duty on the part of the accused as prisoners of war. It is submitted that it was not necessary to have any separate charge of desertion. Desertion was the first step taken by them in connection with the offence of waging war against His Majesty the King. Not only did they desert the army, but they actually waged war against the King.

It must be remembered that the accused were not merely civil subjects but Indian Commissioned Officers in the Indian Army. If they waged war against His Majesty the King, it necessarily implies previous desertion by them from the army. They could not have fought against His Majesty's forces without first deserting the army in which they held commissions.

As regards the contention that this court-martial has no authority to try the case because of Section 196 of the Criminal Procedure Code, it is not denied by the defence that the Criminal Procedure Code is not applicable to these proceedings. Section 41 of the Indian Army Act provides that every person subject to this Act who either within British India or at any place beyond British India commits

any civil offence shall be deemed to be guilty of an offence against military law and if charged therewith under this section shall, subject to the provisions of this Act, be liable to be tried for the same by court martial and on conviction be punished. It will be noticed that the section itself gives jurisdiction to the court martial to try the offence. It is contended that by Section 7 (18) civil offence is defined as an offence which if committed in British India would be triable by a criminal court and it is argued that it cannot be left in the air as to which criminal court is to try the offence. The answer to this has already been given, namely that Section 41 itself says that the person shall be liable to be tried for the same by court martial. It was contended that we must go to an appropriate Act to show what is triable. It is submitted that the appropriate Act is the Indian Army Act itself. The Criminal Procedure Code is a Code of Procedure. All offences under the Indian Penal Code are triable by some criminal court or other. The Criminal Procedure Code lays down which particular court shall try which particular offences. In dealing with this procedure, Section 196 of the Criminal Procedure Code says that no court shall take cognisance of an offence punishable under Chapter VI unless upon complaint made by order of or under authority from the Provincial Government or some officer empowered by the Provincial Government in this behalf. The words 'no court in this section, of course, mean no court under the Criminal Procedure Code. There is no prohibition either in the Indian Army Act or in the rules under the Indian Army Act of a nature similar to that contained in Section 196 of the Criminal Procedure Code. It is submitted that the attempt to bring in Section 196 by the back-door is futile.

As regards the contention that the trial is illegal by reason of Rule 24 of the rules under the Indian Army Act, it is submitted that this contention is also unfounded. Rule 24 deals with the joint trial of several accused persons. If there is an offence which is charged to have been committed collectively by more than one person and they are tried together there is no provision in the rules to prevent separate charges being brought against one or other of the accused and tried at the same trial along with the joint charge. Rule 18 says that a charge sheet may contain one charge or several charges. This is in marked contrast to the provision in Section 233 of the Criminal Procedure Code that for every distinct offence of which any person is accused there shall be a separate charge and that every such charge shall be tried separately except in the cases mentioned in Sections 234, 235, 236 and 239. Rule 39 provides that the accused when required to plead to any charge may object to the charge on the ground *inter alia* that it is not in accordance with the rules. Rule 68, sub-rule (e) says: Where a charge-sheet contains more than one charge, the accused may before pleading claim to be tried separately in respect of any charge or charges in that charge-sheet on the ground that he will be embarrassed in his defence if he is not so tried separately and in such a case the court unless they think his claim unreasonable, shall arraign and try the accused in like manner as if the convening officer had inserted the said charge or charges in different charge sheets. No such objection was taken. It was only in the closing address of counsel for the accused that the objection was taken. Rule 135 of the Indian Army Act Rules provides for validating irregular procedure in certain cases and, omitting the unnecessary part says that the finding and sentence of a court martial may be confirmed and shall, if so confirmed and in all cases where confirmation is not necessary, be valid notwithstanding any deviation from these rules, or notwithstanding any defect or objection technical or other, unless it appears that any injustice has been done to the offender. The case of *Subramania vs. the King Emperor*, 1 L. R. 2, Madras page 61, cited by Counsel for the Defence has no relevance in this case.

The tenth charge against Capt Shah Nawaz is of abetment of the murder near Popa Hill on or about March 29, 1945, of sepoy Mohammed Husain, by Khazin Shah and Aya Singh. The witnesses who disposed to this incident are Havildar Ghulam Mohammed, Alla Ditta, Jagiri Ram, and Lance Naik Sardar Mohammed. Hav Ghulam Mohammed in his evidence said that on or about March 26 or 27 he received the report that three men from No 1 Battalion had been placed in quarter guard and he gave the name of one of these three men as sepoy Mohammed Husain. The witness was told that these men had tried to desert and therefore had been placed under orders in the quarter guard. According to this witness, on the evening of March 28 when Capt Shah Nawaz Khan returned from his duty the Commander of No 1 Battalion brought these three men before him. Capt Sahgal interrogated them and Mohammed Husain admitted his guilt and the other two pleaded not guilty. The witness was told by Capt Shah Nawaz to ask the officer to investigate the case. According to the witness, on the morning of March 29 the three accused were again brought up. He says in his evidence: "On the morning of March 29 these three accused were again brought up. The Battalion Commander read out the same charges to them and Col Sahgal asked them whether they pleaded guilty to the charge or not. Mohammed Husain pleaded guilty, the other two pleaded not guilty. Three separate charge-sheets were prepared. I read all the three, then these men were sent back to the Divisional Headquarters. I was present at the office and saw them go out accompanied by the regimental second in command and the Battalion Commander. Between 2 and 3 p m I was in my hut when the regimental second in command and the Battalion Commander came back. Their names were Major Negi, and Lt Khazin Shah. Then they went away. I saw Mohammed Husain in the evening at about 4 or 5 o'clock when he passed in front of my room. He was accompanied by 2nd Lt Sardar Mohammed, Adjutant of No 1 Battalion, and 2nd Lt Aya Singh." It will be noticed that this witness was not cross-examined on the statement which he made that three separate charge-sheets were prepared and that he read all the three.

The next witness Alla Ditta said in his evidence that he knew sepoy Mohammed Husain who belonged to a British regiment before. Witness belonged to the "C" Company and Mohammed Husain to Headquarters "C" Company. Witness also said that he knew Jagiri Ram who was also in "C" Company of his battalion. The witness then said that on March 26, 1945, between 2 and 3 p m Mohammed Husain came to him and told him that he intended to desert that day. The witness told him that that day was not suitable for escaping and that some other day would be more suitable. He went back. The same day at sunset witness was called to battalion headquarters where he saw Jagiri Ram, Mohammed Husain and Khazin Shah. The further evidence of this witness is in these words: "After that Khazin Shah gave me a beating and told me that I was disloyal to the I N A and that I was one of the men who intended to escape and said: 'Mussalmans like you betrayed even Turks.' Then I was shut up in the quarter guard and taken to headquarters. The next day I was brought before Col Sahgal and statements were taken individually. Col Sahgal asked me if I intended to escape. I said 'no,' I did not intend to escape.' I mentioned to him about Mohammed Husain's visit to me regarding his intended escape. Then I was sent out. Khazin Shah ordered Ghulam Mohammed, the Brigade Adjutant, to inquire and question Alla Ditta and others who wished to escape. Ghulam Mohammed detailed Aya Singh to beat us and question Alla Ditta and others who intended to escape. Ghulam Mohammed told Aya Singh to find out from Alla Ditta regarding the six other persons who intended to escape. On March 25, 1945, I was beaten and interrogated by Aya Singh. I stayed there on March 27 and 28. On March 28, our battalion was to move to Legyi village. Khazin Shah told Ghulam

Mohammed to inform Capt. Sahgal that if these men were not punished he would give up the command of the battalion. I was present then. On March 29 Major Negi and Khazin Shah took me before Col. Shah Nawaz to the Divisional Headquarters. I was put before Col. Shah Nawaz. Three of us were present, myself, Jagiri Ram and Mohammed Hussain, besides Col. Shah Nawaz, Major Negi, Khazin Shah and two other sentries. The sentries stayed out and we went in.

I saw that three different crime reports had already been made regarding us. Major Negi took the crime reports and handed them to Col. Shah Nawaz who read them out separately to each one of us. First, Jagiri Ram was questioned by Col. Shah Nawaz. There myself and Jagiri Ram were present at the same time. Col. Shah Nawaz inquired from Jagiri Ram if he had intended to desert. He replied "no." I did not intend to desert. I was questioned next and I told that I did not intend to desert. Then Col. Shah Nawaz said that I was an N.C.O. and Mohammed Hussain had approached me and I had not reported the matter. I said that it was my fault. Then he questioned Mohammed Hussain as follows: Did you intend to desert or make others to desert with you? Mohammed Hussain replied "no." I did not intend to desert. Col. Shah Nawaz told "Speak the truth. Mohammed Hussain said 'I had a few difficulties and, therefore, I intended to desert. But no inquiries were made into his complaints. Mohammed Hussain was told by Col. Shah Nawaz: 'You are sentenced to death by shooting because you intended to desert yourself and were persuading others to do the same. Therefore you are not pardoned.' I heard Col. Shah Nawaz saying put off the case to the Regimental Commander. Then we all three of us were sent out. I recognize Col. Shah Nawaz as the accused before the Court. We waited there for 10 minutes, and were brought back to Brigade Headquarters. Mohammed Hussain, Jagiri Ram and myself came together back to Brigade Headquarters. Mohammed Hussain and myself were put back in the same cell in which we were before and Khazin Shah took away Jagiri Ram. The same day at about 5 p.m. Sardar Mohammed, adjutant of our battalion, and Aya Singh took away Mohammed Hussain. I have never seen Mohammed Hussain since then. As regards the witness himself, he says that he did quarter guard for three or four days, then he was produced before Major Negi. He was reduced in rank and Major Negi said "You will have to go to Rangoon." This witness was taken to a concentration camp in Popa and on April 7, 1945, along with 16 other men he was despatched to Rangoon by march route.

In the cross-examination of this witness, it was attempted to be made out that Capt. Shah Nawaz did not sentence Mohammed Hussain to be shot. The whole of the cross-examination is as follows: No decision was arrived at either in my case or in the case of Jagiri Ram. It is true that all that Col. Shah Nawaz said was that you deserve to be shot. Col. Shah Nawaz said that persons like you will be sentenced to death by shooting. Col. Shah Nawaz told Mohammed Hussain: You yourself wanted to escape, secondly you have tried to persuade others to escape. Therefore you are a rebel to the I.N.A. and should be sentenced to death by shooting. I saw Col. Shah Nawaz write something on the crime report. How could I read the crime report without picking it up from the table? I do not understand English. I do not know what he wrote there and I do not know English and I had not read what was written in the crime report at that time. In his re-examination witness said that the crime reports were lying on the table and Col. Shah Nawaz read them out as he spoke to us individually. He wrote on the crime report which had already been drawn up.

It is submitted that this cross-examination does not help the defence in any way. Reading the cross-examination as a whole it is submitted that according to the evidence of this witness, Capt. Shah Nawaz sentenced Mohammed Hussain to death by shooting. The previous witness deposed to three crime reports having

been prepared and his having read them, the fact that the witness did not know English does not detract from his evidence on this point. In fact, as noted by the Court, the witness used the word 'Put off the case to the Regimental Commander' in English. Even a sepoy who does not know English knows what a crime report is and from the fact that Major Nagi gave the papers to Col Shah Nawaz and he read them out separately to each of the three accused, witness can certainly say that they were crime reports. The questions put by Capt Shah Nawaz to the accused from the papers before him were sufficient to convey to the witness the fact that the papers were crime reports.

The next witness on this point was Jagiri Ram. He says that he knew Mohammed Husain and Alla Ditta and that Mohammed Husain himself and a Garhwali talked about escape when they were in Popa Hill area. He also deposes to the inquiry made by Khazin Shah in the matter and that Khazin Shah allowed the Garhwali to go. He gives the details of the inquiry by Khazin Shah. Witness then deposes to the fact that at sunset Khazin Shah took Mohammed Husain and the witness to Brigade Headquarters. Alla Ditta arrived later. After that all the three of them, Mohammed Husain, Alla Ditta and the witness were put into the quarter guard and their hands were tied. On the following day they were brought before Col Sahgal who interrogated them. Major Negi and Khazin Shah were present. Witness then deposes to the fact that Lt Aya Singh gave each of them a beating and said that he would release them if they would tell the names of the people who intended to escape. Witness continued to say that he did not know.

The further evidence of the witness is in these terms: "Next day we were taken to the Divisional Commander, Col Shah Nawaz. We were accompanied by Major Negi, Khazin Shah and the sentry. All three of us, myself, Alla Ditta and Mohammed Husain were produced before the Divisional Commander. The Divisional Commander asked me to speak the truth. He asked whether I intended to escape. I said no, I did "not" intend to escape. Capt Shah Nawaz asked us why we did not report the matter. I said that I did not know anything about it and I did not intend to escape. He asked me if there was any officer or N C O near me, I said "No," I was working with my medical officer. Then Capt Shah Nawaz asked Alla Ditta: 'When Mohammed Husain talked to you about escaping did you report to any one?' Alla Ditta said: I do not know anything about Mohammed Husain's escape. I thought it was a joke. I do not know anything about it.

Capt Shah Nawaz then said to Alla Ditta: 'You are an N C O. Why did you not report?' Alla Ditta begged his pardon and said that he did not know anything about Mohammed Husain. Then Capt Shah Nawaz questioned Mohammed Husain and Mohammed Husain replied that he was in difficulties and that he intended to escape and asked to be forgiven. Capt Shah Nawaz then told him: 'You are not for our country; you are our enemy. I will give you death by shooting. Then Mohammed Husain asked for forgiveness and said that he was prepared to go anywhere he was ordered. Capt Shah Nawaz said nothing to this. All the three of us were then sent out and we were taken to Brigade Headquarters accompanied by Major Negi and Khazin Shah. I moved towards the battalion with Khazin Shah and sub-officer Barfi Singh. When I reached the Battalion Headquarters, Khazin Shah told Barfi Singh to take me to Company Headquarters. In the evening an orderly took me to Battalion Headquarters. Mohammed Hussain was there. Khazin Shah and Aya Singh were also there when I arrived. Khazin Shah told me: 'You will shoot Mohammed Husain because you are one of the men who were trying to escape with him! I declined and said: I will not shoot him and that I did not know how to fire a rifle. Khazin Shah

told me again. If you do not shoot Mohammed Husain, you will be shot yourself. I still refused and he drew his pistol. I refused again and Aya Singh got hold of a rifle. He put the rifle to my shoulder and put my finger round the trigger. Khazin Shah told Aya Singh to give the order to fire. There were three of us, one Sikh, one Tamil and myself. Mohammed Husain was blindfolded by Aya Singh. He was made to sit on the ground with his back against a tree. His hands were tied behind him. Aya Singh ordered me to fire and so I did. Mohammad Hussain died there. Khazin Shah ordered Aya Singh to give the order to fire and Aya Singh gave it. Khazin Shah told me to report to my company and not to come to the Battalion Headquarters. That evening we marched off to Legyi. Then we stayed at Legyi for two or three days. Then I went over to the British.

In the cross-examination of this witness, it was suggested that the witness could not know that a man was a Garhwali because the witness did not know the Garhwali language. Surely a man can know that another man is a Garhwali even if the first man does not know the Garhwali language. Witness said that he knew that he was a Garhwali because he lived with him and he spoke Garhwali. Witness further said that he came to know Mohammed Husain in the company. He used to live with him at headquarters. He used to sit in his company. He knew that he was a Mohammedan and he did not know anything more about him. Witness said 'He used to live with me. Surely I knew him. I cannot give a long description of him except his physical description. I do not know anything else about him. The suggestion in the cross-examination was that the witness did not know Mohammad Hussain. But the answers of the witness are, it is submitted abundantly clear to show that the witness knew Mohammad Hussain. The witness was not asked to give a physical description of Mohammad Hussain. A man may definitely know many persons by sight and by name without knowing anything more about them. In fact witness knew Mohammed Husain more than merely by name and by sight as his evidence shows. It was then attempted to shake the evidence of this witness by showing that he did not know the English word crime. Witness said that he knew the word report in the sense of making a report to somebody. Witness was given a slip of paper on which the words 'crime report' were written and he was asked whether he understood the words written on the piece of paper. Of course, the witness said no. Witness never suggested that he could read English. As stated above the phrase 'crime report' would be known even to Indian sepoys who do not understand English. In fact, it would be surprising if they did not know the phrase. Witness further said in his cross-examination that Capt. Shah Nawaz said that he (meaning Mohammed Husain) was not for his country, that he was an enemy and that he would give him death by shooting. It was contended on behalf of the defence that no reason has been given why Lt. Khazin Shah ordered Jagiri Ram to be one of the shooting party. The reason has been given by Jagiri Ram in his evidence when he said 'Lt. Khazin Shah told me 'You will shoot Mohammed Husain because you are one of the men who were trying to escape with him. Obviously this was Lt. Khazin Shah's idea of nemesis. It was also suggested in the closing address of Counsel for the Defence that Jagiri Ram's evidence was to the effect that nothing was decided in our case. The attempt was to read the words 'in our case' as meaning in the case of all the three of them. But if the whole passage is read it is clear that the witness meant in the case of himself and Alla Ditta. He had already deposed to the fact of Mohammed Husain having been sentenced to death. Then he goes on to say nothing was decided in our case meaning thereby in the case of himself and Alla Ditta. The next witness on this point was Lance Naik Sardar Mohammad. He was the Adjutant of the First Battalion. According to his evidence, on March 27 Lt. Khazin Shah sent for the runners. On arrival of the runners he ordered them to bring the

following men to the Battalion Headquarters, sepoy Mohammed Husain, Lance Naik Alla Ditta, Lance Naik Mohammad Shah, sepoy Jagiri Ram and sepoy Gobru Singh. Witness said that Mohammad Hussain was a sepoy in the Indian Army before he joined the I N A and that he knew it from his own knowledge. Witness said that when he brought him from Brigade Headquarters he asked him what he was in the Indian Army and to what unit he belonged. He said "I am a sepoy of the H K S R A". Witness then deposed to the interrogation of the men by Khazin Shah. Lt Khazin Shah told the witness that he was going to Brigade Headquarters that evening to talk about those and then he went away. Lt Khazin Shah then ordered him to take those men to Brigade Headquarters. Witness and a sub-officer took them there. Witness met Lt Khazin Shah on the way and he handed over those men to his charge. He let off Lance Naik Mohammad Shafi on the spot because his Platoon Commander recommended him and he came there. He said that Mohammad Hussain had been sentenced to be shot. Nothing was said about the others, but Jagiri Ram was with him at the time. Lt Khazin Shah asked the witness to go to Ghulam Mohammad, the Brigade Adjutant, and ask him whether Mohammad Hussain was to be shot under battalion arrangements or brigade arrangements.

The further evidence of this witness is in the following terms: "If the orders were for Mohammad Hussain to be shot under battalion arrangements, I was to bring back Mohammad Hussain with me. I was also asked to bring sepoy Mohammad Ibrahim who had been released from the quarter guard. I received instructions that Mohammad Hussain was to be shot under battalion arrangements on the same day. I brought him back with me to Battalion Headquarters. I also brought back sepoy Mohammed Ibrahim and Aya Singh came with me. I conveyed these orders to Lt Khazin Shah. He then ordered me to arrange for the execution of Mohammed Hussain. I then asked him what arrangements I should make. He asked me to detail 10 men with pick axes and shovels. I detailed those men and a grave was dug. I was then ordered, by Lt Khazin Shah, to take Mohammed Husain to the edge of a nullah. Mohammad Hussain was taken to the edge of the nullah. Lt Khazin Shah, 2nd Lt Aya Singh and Havildar Major Gobind Singh, some sepoy and myself went with Mohammad Hussain to the nullah. Lt Khazin Shah ordered Mohammad Hussain to be tied to a tree and also ordered that he should be blindfolded. I passed on the orders to sub-officer Gobind Singh who carried them out with the help of two other sepoy. After this Lt Khazin Shah called two men out of the fatigue party to shoot Mohammad Hussain. They were both sepoy: one was a Tamil and the other was a Sikh. After the arrival of these men Lt Khazin Shah ordered that Jagiri Ram would also fire on Mohammed Husain. The three men stood in a line facing Mohammad Hussain and Khazin Shah told Aya Singh to give the order to fire. Aya Singh hesitated. Khazin Shah once again told him to give the order to fire. Aya Singh gave the order. All the three sepoy fired a round each on Mohammad Hussain. Mohammad Hussain was killed. His body rolled over sideways. Lt Khazin Shah then ordered me to send Abdul Hakim to arrange for his burial. I passed on these orders to Abdul Hakim. The battalion was to move the same day on an operational role and it did so. No casualty report was sent. The sending of a casualty report was part of my duties. I did not make a casualty report because night had fallen and we had to march the same night. On April 3, I escaped and reported to the Allied forces. I escaped from Legyi village."

In cross-examination it was suggested to the witness that on April 1, he took a casualty report to Capt Sahgal. Witness denied this. Witness said that he did not know if any casualty report was sent. No evidence was called by the defence to support this suggestion. Witness said in his cross-examination that he was between 12 and 15 yards away when Mohammad Hussain fell. He said that he

went near Mohammad Hussain and found that he was dead, with three shots in him. The shirt covering his breast was torn and from the amount of tear I considered there were three shots. Witness was not present at his burial. In answer to the Judge Advocate the witness said that when he found the three shots had gone into him and he was lying on a side, he inferred he was dead. The firing was about eight to ten yards away from Mohammad Hussain. The shooting of Mohammad Hussain occurred at about dusk. Witness did not see any blood on Mohammad Hussain.

In the statement of Capt. Shah Nawaz it is stated that it is in fact wrong that he sentenced Mohammad Hussain to death or that he was shot in execution of a sentence passed by him. According to the witness statement Mohammad Hussain and his companions were only informally produced before him there being no crime report drawn up. Capt. Shah Nawaz said that he only very strongly admonished Mohammad Hussain and told him that he had committed an offence for which he could and should be shot. Capt. Shah Nawaz says that he left the matter there and asked the case to be put up again before him or the regimental commander who had in the meanwhile been vested with the power to try such cases if the men concerned attempted to misbehave a second time and that the case never came up before him, presumably because the contingency never arose.

It is submitted that the evidence clearly shows that Mohammad Hussain was sentenced to death by Capt. Shah Nawaz, that the sentence was to be carried out under battalion arrangement and that Lt. Khazin Shah as the battalion commandant ordered Aya Singh to give the order for firing and that Mohammad Hussain was shot dead pursuant to such order. It is submitted that the evidence leaves no doubt as to the identity of Mohammad Hussain. It is also submitted that as the result of the shooting Mohammad Hussain died. The detailed evidence of the prosecution on this point is more than sufficient to prove the above facts. Havildar Gulam Mohamad who was the adjutant actually saw the crime reports and the statement of Capt. Shah Nawaz that no crime reports were drawn up cannot be accepted as correct. Havildar Ghulam Mohammad's statements that the crime reports were drawn up and that he read them was not challenged in his cross-examination. The fact of the shooting is it is submitted also proved beyond doubt. As also the fact that Mohammad Hussain died as the result of the shooting. The evidence shows that a grave was dug for Mohammad Hussain before the sentence was carried out and after he was shot orders were given for him to be buried. It is submitted that the proof of death is beyond reasonable doubt but even if there is any doubt left in the mind of the court the only consequence would be that the conviction of Capt. Shah Nawaz would be that of abetment of an attempt to murder instead of abetment of murder.

I will now deal with the charges two to nine which are against Capt. Sahgal and Lt. Dhillon, of the murder so far as Lt. Dhillon is concerned of the four sepoy and abetment of murder so far as Capt. Sahgal is concerned of the four sepoy. So far as these charges are concerned there is documentary evidence which it is submitted is conclusive. There are two crime reports both dated March 6 1945 exhibits KKK and WWW. We do not know why and how there came to be two such reports. They are identical except that in exhibit WWW the service is stated to be 'years 3' whereas in exhibit KKK the service is stated to be 'years 4 8 months'. The only difference therefore is that in exhibit WWW the figure 4 before the letters 'years' is omitted but both these documents are original crime reports and the evidence as regards these documents which has not been challenged in cross examination is that given by Lt. Nag. He says The words remanded for Divisional Commander's trial under the column punishment awarded are in the handwriting of Lt. Dhillon and the signature below it is that of Lt. Dhillon. The words 'sentenced to death' are in the hand

writing of Capt. Sahgal and there is the signature of Capt Sahgal under the column by whom awarded and date and at the bottom of the crime report there is the signature of Lt G S Dhillon as "Commander of Unit No 420" He could not recognize the handwriting of the words after the words 'sentenced to death' which is before the signature of P K Sahgal. As regards exhibit WWW, witness says "under the column head punishment awarded the words 'remanded for Divisional Commander's trial' are in the handwriting of Lt Dhillon and signed by him. The words 'sentenced to death' are in the handwriting of Capt Sahgal and signed by him. At the bottom of the crime reports conclusively prove that Capt Sahgal passed the sentence of death on these four persons. In the statement of Capt Sahgal he admits that they found guilty and sentenced to death, but he says that the sentence was not carried out, and the convicts like many others who were similarly tried and sentenced about that time had been pardoned on their expressing regret and giving an assurance not to misbehave in future. He says that the fact of a sentence having been passed was used for its propaganda value in order to deter others from deserting. Lt Dhillon in his statement says "It is true that I committed four men for trial with the charge of desertion and attempt to communicate with the enemy. It is, however, quite untrue that these men were shot at my instance or under my orders. On the day and at the time they are said to have been shot, I was confined to bed and unable to move. In fact, the sentences of death passed on these men were subsequently remitted by the Divisional Commander and were never executed." In making this statement both Capt Sahgal and Lt Dhillon seem to have overlooked exhibit WW which is a special order of the day dated March 19, 1945, signed by Capt Shah Nawaz Khan who was the Divisional Commander. This document was also not referred to by Counsel for the Defence in his address. This document has also been proved by the evidence of Lt Nag which has not been challenged in cross-examination. In this document it is clearly stated as follows. "The sentence of death was carried out at 19-00 hours on March 6, 1945, and then goes on to say "This order will be read out to all troops."

As regards the actual shooting of the four sepoys we have the evidence of Nursing Sepoy Abdul Hafeez Khan. He says in his evidence as follows "After I came back from Rangoon I saw four men being shot. They belonged to No 8 Battalion. There was a Company fallen in to witness this shooting. This Company belonged to No 7 Battalion. One day I was carrying a patient and saw four men near the nullah whose hands were tied behind their backs and who were escorted by two sentries. When I was coming back after leaving the patient in hospital I noticed some men assembled near the nullah. Seeing this assembly of men I went up there. When I reached there one company was fallen in and a trench had been dug there. The accused Major Dhillon and a few other officers were collected there. The four men were made to sit in the trench. Then Major Dhillon asked for volunteers to shoot these men. Two men from that company and one man from Brigade Headquarters came up. Their names were Nayak Sher Singh, Kalu Ram and Hidayatullah. Two carried rifles and one a pistol, Sher Singh had the pistol. Then Major Dhillon called out the name of one of the four men in the trench. Major Dhillon told the Company present that these four men had gone over to the enemy and had been caught and, therefore, their punishment would be death. "Then Major Dhillon ordered Hidayatullah to shoot the person who had been called out of the trench first. By this time this person had come out of the trench. He was standing on the edge of the trench. This person was then shot by Hidayatullah and he fell down. The person was not blindfolded. He was about 20 yards from Hidayatullah when fired upon. Then Major Dhillon called out the name of another person who also came out of the trench. As in

the first case, this person was also told his punishment and this person also was shot by Hidayatullah. Then Major Dhillon called out the name of the third man who was also told his sentence like the previous ones and Kalu Ram shot him under Major Dhillon's orders. Major Dhillon then similarly called out the fourth man and this man was also shot by Kalu Ram. I saw the four persons after they had been shot. They were not dead because I saw them move. Major Dhillon then ordered Naik Sher Singh to put one or two bullets into those who had not died. Sher Singh then went up to them and fired putting one or two bullets into each one of them. I did not see them moving after Sher Singh had fired. Then I saw Capt. Lee, the medical officer of the service battalion, examine them. Capt. Lee said something to Major Dhillon. Capt. Lee told Major Dhillon that these men were dead. Afterwards Major Dhillon ordered the dead bodies to be buried. I did not see them being buried. I then came away from the scene.

In the cross-examination of this witness it was suggested that his conduct in stopping to see what was happening was extraordinary and that instead of waiting to see what was happening he should have gone back straight to his unit after admitting the patient. It is submitted that there is nothing unnatural in the witness stopping to see what was happening. It was only human and natural on his part to stop and see the tragedy. It was then suggested in the cross-examination that he could not have known the names of Hidayatullah, sepoy Kalu Ram and Naik Sher Singh because he never rendered first-aid to these three persons. The witness said that he knew them because they belonged to his battalion. He was of course, attached to No 7 battalion hospital. That, however does not mean that for that reason he could not have known them. It was also put to the witness and the witness admitted that he had no personal contact with these three men before that day and he had nothing to do with them after the incident. But he added 'They used to be in my battalion and I knew them. He also said. It was part of my duty to know the names of as many men as I could in the battalion. When a few men live together they know the names of each other. I had not talked to any of these men before that day. I have never seen these three men since. Witness said that he was 10 to 12 yards away from Major Dhillon at the time and that he remembered every detail of what he had told the Court. He said he did not know the names of any of the four men who were shot nor their identity. It was then put to him in cross-examination that in the summary of evidence which he gave he did not say that Major Dhillon had ordered Sher Singh to fire a pistol. The answer of the witness was that as far as he remembered he said that Major Dhillon had ordered Sher Singh to fire a pistol, but that it was not taken down. In answer to the Court the witness said 'This company in the nullah was properly fallen in. These men were in front of the company. The company was about 10 to 12 yards from the men and I stood near the company on one side. Major Dhillon gave orders for the fourth man to be shot.

The next witness examined on this point was sepoy Gian Singh. He corroborated the version given by the previous witness including the firing and said that Major Dhillon ordered Sher Singh to shoot and finish off those of the four who were not dead and then Sher Singh fired at all the four with a pistol from a distance of about five yards. He further said 'Before Naik Sher Singh had fired on them, they were shrieking but I do not see them. They were lying near the nullah. Major Dhillon then said that anybody who did what these men had done would be dealt with similarly. The four bodies were buried in a trench. I saw them being buried. These four men who were killed were Jats. I do not know anything more about them. The witness was cross examined in detail as regards the size of the nullah and the position of the four sepoys.

and of the persons who were present there. It is submitted that the answers given in the cross-examination, throw no doubt on the veracity of his evidence. The statements made by him in cross-examination did not show that there was anything improbable or inconsistent in the evidence given by him. Even if there is any ambiguity, it was completely removed in the answers which he gave to the Court at the end. Witness also stated to the Court that Maj Dhillon read out that these men were Jats from No 8 Battalion.

On behalf of Lt Dhillon it was argued by counsel that he was ill on the date in question, namely, March 6, 1945, and that he could not have been present at the shooting as deposed to by the witnesses for the prosecution. For this reliance is placed on exhibit VVV which is an operation order signed by Lt Dhillon and dated March 6, 1945. What is relied upon is the letter at the foot of this operation order in which Lt. Dhillon says that the previous night he had gone to check certain defence and on his arrival back he felt very weak, so weak as he had never felt before throughout his life, and that Shankar gave him an injection that day and that he would get one the next day. But the same letter says as follows "I hope most of your queries have been answered in this order, others I will answer when I come tomorrow." I submit it is not possible from this document to come to the conclusion that Lt Dhillon could not have been present at the shooting as deposed to by the prosecution witnesses.

It was further contended that there was no proof of identity of the four persons who were shot. I submit that the identity has been sufficiently established by the two crime reports exhibits KKK and WWW and by the special order of the day dated March 19, 1945, exhibit WW. There is the further fact that according to the prosecution evidence, Lt Dhillon stated at the time of the execution that these men had attempted to desert and they were, therefore, being shot.

It was also contended on behalf of the defence that the fact of nursing sepoy Abdul Hafiz Khan having been present at the incident has been contradicted by the next witness (Sepoy Gian Singh) because Gian Singh said "I do not remember any person not belonging to the company being there." This is entirely incorrect. It is not the second witness Gian Singh who says that the first witness nursing sepoy was not there. The answer in question was given by nursing sepoy Abdul Hafiz Khan and not by the second witness Gian Singh. What nursing sepoy Abdul Hafiz Khan said is as follows "I did not see any outsiders apart from the officers of the company and myself."

But even if the answer had been given by the several witnesses as stated by Counsel for the defence and not by the first witness as appears from the record of the evidence it does not follow that a person could not have been there because somebody else did not see him there.

There is, therefore, nothing in the point sought to be made by my learned friend.

Section 302 of the Indian Penal Code provides the punishment for murder. According to Section 299 of the Indian Penal Code, whoever causes the death by doing an act with the intention of causing death commits the offence of culpable homicide. Section 300 provides that except in the cases therein excepted culpable homicide is murder if the act by which the death is caused is done with the intention of causing death. The exceptions mentioned in that section have no relevance to the present case. Section 109 of the Indian Penal Code provides for the punishment of abetment if the act abetted is committed in consequence. Section 107 of the Indian Penal Code says that person abets the doing of a thing who, among other things, instigates any person to do that thing or intentionally aids by any act or illegal omission to the doing of that thing. As Capt Sahgal was not

present when the four sepoy's were shot, he is charged only with abetting their murder and not with the murders itself. Section 144 of the Indian Penal Code says: whenever any person who is absent would be liable to be punished as an abettor is present when the act or offence for which he would be punishable in consequence of the abetment is committed he shall be deemed to have committed such act or offence. As he was not present at the shooting, he can only be charged with abetment of the offence. For the same reason as Captain Shah Nawaz Khan was not present at the shooting of Mohammed Husain, he is charged with offences of abetment of murder.

It has been contended that there is only one charge, namely that of waging war because murder is a part of the first charge. It was argued that the first charge would cover every charge of firing a second shot. It is submitted that this contention is not correct. The prosecution has not charged the accused with more than one charge in respect of waging the war. The charge of murder is distinct and separate from that of waging war because waging war involves fighting against and it might be killing the persons in the opposing army. Waging the war does not necessarily involve killing a man who is on the same side as the person charged with the offence.

If it is contended that the accused were justified in passing the sentence of death and in shooting the persons mentioned in the charges because they were authorised under the Indian National Army Act which is said to have been passed under the authority of the Provisional Government of Free India the answer to the argument is that the Provisional Government of Free India was itself an illegal body and the formation of that body was itself an offence against the State and neither that body nor any tribunal constituted under it nor any order or authority derived from such a body can be recognised by this court all of them being unlawful. In the case of *R. Maguire and O Sheil* reported in 1923 *second Irish Reports* King's Bench Division page 58 the question of such a body and authority derived under it came up for consideration. The question arose on an application for a writ of *certiorari*. Certain persons in Ireland were attempted to be deprived of their land under certain orders or judgements of the judges and commissioners of Land Court and Land Settlement Commission of Dail Eireann. Jurisdiction of those courts was said to be derived from a decree of An Dail. In dealing with the question Justice Molony at page 63 said: In the present case, far from there being any right or duty in the tribunal to decide the matter their assumption of authority was illegal from the beginning and consequently they are not subject to the writ of *certiorari*. In further dealing with the point, he said: The answer is that this court while it prohibits and quashes the orders of inferior tribunals which exceed their jurisdiction does not take notice of bodies which act openly and avowedly in defiance of the law. The court has never issued a writ of prohibition or *certiorari* to an illegal body which challenges the authority of the Government and with which it is the duty of the Government to deal. Justice Dodd said: 'I extract from all the authorities that the only courts that can be restrained by prohibition are courts established by the Legislature who are usurping a jurisdiction of a judicial character not within or in excess of powers conferred upon them by the Legislature. I do not ground my decision on the proclamation. I base it upon the fact that the courts were not established under any legislative enactment. Their orders are without sanction. They cannot protect any sheriff, jailor or other officer acting upon them.'

Justice Samuels in his judgment at page 66 said: 'These tribunals whether of first instance or of appeal were not courts in any sense known to the law. They had no jurisdiction either by common law or by statute to sit, decide or decree. Further they purported to act as tribunals of a Republic claiming to

have been established in Ireland within a Dominion of His Majesty the King At common law and by the statute law of the Realm, those who instigated or took part in the proceedings of this court were themselves liable to indictment " Further on at page 69 the learned Judge said " The so-called court that we have to consider, however, never had any legal powers and was never entrusted with any jurisdiction which it might exceed Its operations were not merely extra-legal, but anti-legal " At page 70 the learned Judge said " The tribunal we have to consider in the case was not so created It acknowledged no such authority It was not a court within the British constitution It was set up as the court of a Republic and in repudiation of any such allegiance as is inherent in all courts hitherto known as court within the King's Realm "

My submission is that charges two to nine have been proved beyond any reasonable doubt

In conclusion, I submit that all the charges against all the accused have been proved beyond any reasonable doubt There is no defence in law to the charges against the accused. There is a good deal of evidence to the effect that what the accused did was done by them not with any mercenary motive, but out of what the accused *bona fide* consider to be patriotic motives and impelled by a sense, whether wise or misguided, of doing service to India This, while not affording any defence to the accused in law, may legitimately be taken into consideration on the question of punishment, if the court's findings on the charges are against the accused So far as the court is concerned, its hands are tied in the matter of punishment The minimum punishment which this court can give is transportation for life If the court's finding is against the accused, but the court feels on the evidence before it that the case is a fit one for mitigation of punishment, it is open to the court to add a rider to its finding and sentence to that effect for the consideration of the confirming officer

The court reopens the accused is brought before the court Counsel for the Prosecution addresses the court Transcript of his address is marked 6A, signed by the President and attached to the proceedings

Note by the Court

The Judge-Advocate requests an adjournment until December 29, to enable him to prepare his summing up The court grants this application

At.. ..hours the court adjourned until 10 a m on Saturday, December 29

At 10 a m on December 29, the court reassembled pursuant to adjournment present the same members and Judge Advocate as on December 22, 1945

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Judge-Advocate's Summing-up

The Judge-Advocate in his summing-up said For some time past you have been listening to a case which will have given you, so naturally it must the very deepest anxiety and concern It is not often that a court martial has been called upon to decide issues, both of fact and law, of such importance and complexity as have arisen in this case—a responsibility which now devolves upon you, and to which is linked the heavy burden of establishing the guilt or innocence of the three accused arraigned before you on such serious charges It now becomes my duty to assist you to the best of my ability in discharging that onerous task by summing up to you the law, its application to those charges and to place before you the issues of fact raised by the Prosecution and the defence, respectively In so doing, however, I wish to emphasise impartial attitude which is enjoined on me by the terms of my office and to explain that whilst my function is to advise you on questions, of law as unambiguously and clearly as possible, I am bound to leave questions of fact to your sole

decision, because for such questions you are constituted the sole judges. It is no part of my duty to express any opinion on fact, and I would accordingly request that if, in the course of my summing up, I should inadvertently say anything which might raise an impression that I am expressing an opinion on the evidence, you will not regard any such remark of mine in that light. It may be, for instance, that I shall have occasion to refer to some incident as having happened or of some conversation as having taken place. But that I shall mean that according to the evidence to which I am referring such incident has happened or such conversation has taken place but I thereby express no opinion as to the credibility of the witness who affirmed it. I say this in order to deter any member of the Court from imagining that any expression I may make use of conveys the very slightest hint as to the effect which the evidence may have had upon my mind.

The time has now come for you to consider the evidence and to accept or reject it as you so think fit. In so reaching your findings you are entitled to take into consideration only the evidence which has been given before you at this trial, together with the unsworn statements of the accused. This imposition is placed upon you by the terms of your oath, and it is not necessary for me to remind you of the vital importance of excluding from your consideration anything you may have heard concerning this case outside the four walls of this court room. One would be blind to realities if one ignored the fact that this and other connected trials have attracted public attention both in newspapers and otherwise which in the ordinary course of everyday life must have come to your notice in some form, but you are bound to ignore all such extraneous reports and opinions and to base your verdict solely upon the evidence in the record of the proceedings here before you. In the same connection, I would point out that you have had the benefit of hearing the very eloquent addresses of the learned Advocate General and the learned Counsel for the Defence. But I would ask you to distinguish carefully between the evidence which you have heard and the inferences which the respective parties have asked you to draw from that evidence. Such arguments are valuable inasmuch as they suggest lines of thought for the Court to consider, but, nevertheless it is your function, and yours alone, to decide what facts you consider proved in evidence, and then to draw your own inferences therefrom.

Throughout British and Indian Criminal Law there is a first principle which demands your attention from the outset. It is one of which you probably are aware but which is of such importance that I make no apology for re-stating it. In short, the burden of proving the guilt of each accused, of every ingredient of the offences with which they are charged and of every fact which is alleged against them is upon the prosecution, and it is for the prosecution to satisfy you by relevant evidence, and beyond reasonable doubt of the accused's guilt. The accused are presumed to be innocent until they are proved to be guilty and it is for the prosecution if they can to prove them guilty and not for the accused to establish their innocence. In that connection I would also draw your attention to the very valuable guide provided for you in Section 3 of the Indian Evidence Act which indicates the degree of certainty of proof required. Whenever, therefore, you have a reasonable doubt, be it on the main or on any subsidiary issue, you must resolve it in favour of the accused.

Counsel for the defence at the close of his final address raised two pleas—one to the jurisdiction of the Court to try the Civil offence of waging war laid under I. A. A. S. 41, and the other relating to the alleged misjoinder of charges in the charge-sheet. Both of these might properly have been raised at the commencement of the trial since, if allowed either of them would have halted the Court at

that stage I deal with them first for this reason, so that you may have my opinion on them as questions of law, before you proceed to turn your minds to a consideration of the other issues raised in this case

It has first been argued by the defence that the offence under Sec 121, I P C, is not a civil offence within the meaning of the definition of "civil offence" given in Sec 7 (18) of the I A A, and that therefore such an offence is not an offence which could be tried and punished under Sec 41 of the I A A

In the alternative, it is argued that an offence under Sec. 121 is such an offence as could be tried by a criminal court in British India only after sanction given by a proper authority under Sec 196, Cr P. C, and that therefore this Court cannot try such an offence without previous sanction from that proper authority

These arguments are based on the definition of "civil offence" given in Sec 7 (18) of the I. A. A. Before I interpret the definition of "civil offence" as given in that section, the Court should understand the context of the words "civil offence" as used in Sec 41 of the I. A. A

Analysing Sec 41 of the I A A, it will be found that it deals with four things person, place, particulars of offence, and punishment. It is a section which deals with a number of offences turned into offences against military law by the use of the words "civil offence", which expression is defined in the Act as an offence, which, if committed in British India, would be triable by a criminal court. When an accused is charged with an offence under Sec 41, I A A, reference has to be made to particulars of offence, to see whether the acts alleged against the accused amount to an offence as defined in some other law, but that reference to an outside code is confined only to the particulars or the ingredients of an offence and to no other purpose

The defence construe the words "triable by a criminal court" as, triable by a criminal court *without the sanction of outside authority*, that it is to say, an offence which can be tried by a criminal court on its own authority. But this construction is confusing. The words "triable by a criminal court" in this definition qualify and control the meaning of an offence. Here the triability by a criminal court has not to be seen in relation to a person or place, but to the nature of an offence. The use of the words "if committed in British India" in this definition goes to show that acts alleged to have been committed should amount to an offence in the eyes of a criminal court in British India, according to the law then in force in British India and nothing else. Thus an offence to be a civil offence within the meaning of Sec 41 should be an offence for which an accused could be charged before any Court which exercises ordinary criminal jurisdiction in British India. The true meaning of the definition is that any act or omission which constitutes an offence for which an accused person could be tried by a criminal court of competent jurisdiction in British India amounts to a civil offence within the meaning of Sec 41, and such a civil offence can be triable and punishable by a court-martial under Sec 41 of the I A A. To ascribe any other meaning to the definition would be inconsistent with the I A A itself

It is common knowledge that a court-martial is convened to try a particular person for a particular offence, and continues so long as that object remains unfulfilled. No sooner is the trial conducted and concluded according to the rules of procedure than the Court ceases to exist. It sits at any place to try an accused for an offence committed anywhere. It can be said to be a mobile Court brought in to being for a specified purpose, it has no fixed territorial jurisdiction; and it does not require any body's sanction, to try a particular case, because it is the creature of a specified authority, viz the Convening Authority. It would be unreasonable to suggest that such a Court should require somebody's

sanction to take cognisance of a specified offence which it has been convened to try. If such an interpretation were to be put on the definition of the words "civil offence" then the very purpose of the Indian Army Act would be frustrated. It is within your knowledge that the Army moves from place to place in time of war; it operates in any part of the world including enemy territory; it may be operating in a country where there is no Civil Government. Suppose, for instance, that an Indian sepoy were to commit a civil offence of this type in Italy and it was proposed to put him up for trial by court martial; if the arguments of the defence were to be accepted, he could not be tried at all, inasmuch as there would be no Provincial Government there to sanction the prosecution. Could it be possible that the Legislature ever intended to fetter the powers of the general court martial in such a way?

For these reasons, gentlemen, I advise you that you have jurisdiction to try the accused for the offence with which they are charged.

With regard to the second point, I A. A. Rule 18 (A) and (C) provides that a charge-sheet shall contain the whole issue or issues to be tried by a court martial at one time, and a charge-sheet may contain one charge or several charges. I A. A. Rule 24, as now amended, reads that any number of accused persons may be charged jointly and tried together for an offence averred to have been committed by them collectively, and any number of accused persons, although not charged jointly, may be tried together for an offence averred to have been committed by one or more of them and to have been abetted by others, that is abetted by the others or other accused, but in such latter case notice of the intention to try jointly shall be given to each accused, and he may claim a separate trial either by application to the convening officer, or to the Court.

It has always been the military practice, and a practice which I consider justified by these rules, that where there is a joint charge against A and B there may be included in the same charge-sheet separate charges against B. Where separate charges against one or more, but not all, of the accused, are so included the accused so separately charged may claim to be tried separately on such charges. See I A. A. Rule 68 (E). This is a claim that any accused may make before pleading to the charges.

Applying the above to the charges in the present case, it would appear that the separate charges against individual accused of murder and abetment of murder have been properly included in the charge-sheet.

The accused or their learned Counsel did not apply for separate trials on the charges in question, nor have they suggested that the accused have been embarrassed in their defence by the inclusion of these particular charges in one charge-sheet.

All that is contended is that on a proper construction of Rule 24 the joint trial on all the charges is illegal.

It is also argued that such a joint trial of three accused persons on a number of charges is illegal under the provisions of Sections 233 and 234 of the Criminal Procedure Code, and authorities have been cited in support of this contention. In my view this Court is not bound by the procedure laid down by these sections for joint trial, and indeed it has been conceded that the Criminal Procedure Code does not fully apply to courts-martial. The validity of the joint trial must therefore be considered in relation to the Indian Army Act Rules.

Now, therefore, considering the joint effect of Rules 28, 24 and 68, I am of the opinion that the joint trial of the accused on the charge-sheet before this Court is permissible and legal, and advise you accordingly.

Before you are advised to consider the applicability of International Law and the propositions based thereon, I should draw your attention to a few matters, viz.,

(i) The accused are I C O's of the Indian Army holding commissions at all material times and remain subject to the Indian Army Act ,

(ii) They are natural born subjects of H M. the King Emperor of India and are amenable to the laws in force in British India ,

(iii) They being tried for offences under the Indian Army Act read in conjunction with the I P. C and are so liable and punishable

Under these circumstances the defence plead for the consideration of rules of International Law and of different aspects of facts proved and disproved bearing on these rules. In other words, while claiming immunity from the consequences of individual liability for acts which may be proved to have been committed by the accused and which may amount to offences according to the laws to which they are subject, the defence claim justification for these acts under the rules of International Law.

In putting to you questions of International Law which have been argued in this case, I propose first to summarise briefly the evidence on certain matters regarding the formation and existence of the Provisional Government of Free India. I shall then examine the propositions of International Law which have been raised by the defence and Prosecution respectively, but in that connection I do not intend to restate all the authoritative judicial decisions quoted by both sides which are embodied *in extenso* in their arguments. I shall refer to these authorities and occasionally quote them to you with a view to explaining the proposition enunciated, and if you wish me to refer you to any particular authority I shall be happy to do so in closed court

The establishment of the Provisional Government of Free India is stated to have been proclaimed by Subhas Chandra Bose at a meeting at Kathay Building, Singapore, on 21st October 1943, in the presence of delegates representing the Indian Independence League branches in East Asia. The Proclamation then issued is embodied in Exhibit FFFF. This Government declared war on Britain and the United States of America. Mr Sabura Ohta deposed that his Government recognised the Provisional Government and that he drafted the original announcement. You have heard from Mr Aiyer the scope and functions of that Provisional Government and that its executive machinery consisted of the various branches of the Indian Independence League throughout East Asia. Lt Nag and Mr Matsumota testified that that Government was recognised by the Axis Powers, the latter stating that Subhas Chandra Bose had asked Japan's Allies through the Japanese Government to recognise the Provisional Government. As against this the Prosecution argue that such activities as it pursued in Malaya cannot be said to be in exercise of any function as regards Government of Free India. Then you had in evidence from Mr Nanda that the total Indian population in East Asia was over two million and in Exhibit XXXX you have some evidence of the strength of the Malayan Branches of the Indian Independence League, but, at the same time, I am bound to point out that you have no definite evidence of the total number of Indians whom the Provisional Government represented at any one time. There is evidence also that the Japanese Government appointed Mr Hachiya as Minister to Government, although at first he was not furnished with credentials and it was only later on representations by Subhas Chandra Bose that they were sent. They apparently never reached him. As to the resources of the Provisional Government Mr Dina Nath told you that there was an Azad Hind Bank in Rangoon and that in Burma the contributions through the Netaji Funds Committee, in cash and kind were about 15 crores. In Malaya those contributions amounted to 5 crores. All these funds were deposited in the Bank in the name of the Finance Minister, who allotted funds to various departments. The Prosecution case on that point is that

these contributions in cash and kind could not be looked upon as regular taxes and that they should be regarded merely as donations and not a regular revenue to a responsible government. That of course is a matter for you to decide

As regards territory it is contended that the Andaman and Nicobar Islands were ceded to the Provisional Government. Lt. Nag stated and also Lt. Col. Loganadan, but he added that he did not take over the administration beyond the Education and Self-sufficiency Programme, and to a certain extent the Department of Justice, because the Japanese would not hand over the Police Department to him. On the other hand, as the defence pointed out ceding territory is not to be confused with taking over territory. On the question of the Japanese right to cede this territory you will remember the passage from Oppenheim's International Law Vol. II, page 341, which expressed the view that an occupying nation may neither annex a country while the war continues nor set it up as an independent state. Another territory said to have been handed over to the Provisional Government was an area of about 50 square miles in Burma known as Ziawadi, where about 1,500 Indians lived. According to Shiv Singh (P W 9) the Provisional Government took possession of this territory about June 1944, at which time Mr. Permanand was a manager. The owner is said to have been an Indian who had returned to India. There was a sugar factory on this territory as well as a hospital and convalescent home for I N A. and there was also an office of the Azad Hind Dal, an organisation charged with the administration of occupied areas. Shiv Singh said that the whole area was administered and run by the Provisional Government. This territory had been handed over to the Provisional Government by Mr. Permanand and Mr. Dina Nath testified in that connection that at a public meeting at which Subhas Chandra Bose had appealed for funds Mr. Permanand had come up and said, "I formally hand over the estate to the Provisional Government of Free India. Nevertheless Shiv Singh maintained that there had been an agreement between the Japanese Government and the Provisional Government that Our Government was to be the master of all that property which belonged to other owners who were not present. There is no evidence, however of any formal cession by the Japanese of this particular territory nor of its handing over by the actual owner. On that evidence the Prosecution maintain that the administration did not amount to an administration of liberated territory and that all that had occurred was that the manager had donated the income of the area to the Provisional Government. Finally, Capt. Arshad told you that when he went to the Imphal Front in March/April 1944 he learnt from official sources that the Azad Hind Dal was administering areas in Manipur State taken over by the I N A. and that he himself had seen reports concerning the administration of those areas and that arrangements for medical aid to the villagers, collection of supplies and settlement of land disputes were in operation under the direction of the Azad Hind Dal and Major M Z Kiani. He received these reports from Capt. Malik in his official capacity as G-1 No. 1 Division. The areas administered were about 1,500 square miles in extent. As to the period during which these areas are said to have been administered you will recollect that there is evidence that the I N A. commenced to withdraw from the Manipur area towards the end of June 1944. Counsel for the Prosecution has drawn your attention to a letter dated 21st June 1944 (Exhibit 5L) from Subhas Chandra Bose to Col. Loganadan in which he stated that a new organisation called the Azad Hind Dal had been started "Who will be going to India in the wake of our victorious armies and he has asked you to accept an inference from the — which is of course entirely at your discretion — that up to that date the Azad Hind Dal had not gone to India, and so could not have administered this territory. In addition to those matters relating to Government and Administration, there was also of course the I N A. functioning under the

authority of the Provisional Government I shall have more to say of this later, but I would here remind you that its strength in August 1944, according to Lt Nag, amounted to about 40,000 men.

Counsel for the Defence has asked you to take judicial notice of an article in a weekly periodical named "Stamp Collecting" for the purpose of showing that the Provisional Government of Free India were about to issue postage stamps. Judicial notice is the cognisance taken by a court itself of certain matters which are so notorious or clearly established that evidence of their existence is deemed unnecessary. *Inter alia*, a court may take judicial notice of matters of history, literature, science or art. Alternatively, the opinion of experts expressed in any treatise commonly offered for sale and the grounds on which such opinions are held might be proved in certain circumstances by the production of such treatise. In this instance, however, assuming that this book is a treatise and its author an expert, the particular article does not express the author's opinion but is merely their production of a letter from a correspondent in which he relates that the Japanese had prepared such stamps. In my opinion, therefore, you cannot take judicial notice of the truth or falsity of the contents in the absence of supporting evidence in proof thereof.

International Law. You have heard the evidence for the Prosecution and for the Defence which has been discussed at length by both sides in their addresses to the Court, each side arguing that certain facts are established by them which support their respective contentions. I have also briefly summarised for you some of the main contentions. It will be entirely for you to hold which facts are established and which are not. My duty is to place the case for both sides fairly and squarely before you. The defence has been based on two grounds. the first being that on facts established by them it is apparent that certain propositions are fully made and that these propositions bear certain rules of international law applicable to this case.

For consideration of the rules of international law as propounded by the defence, it is argued by them that the following facts have been conclusively proved which, I may here remind you again, are matters for your decision.

- (1) That the Provisional Government of Free India was formally established and proclaimed,
- (2) That this Government was an organised Government,
- (3) That this Government was recognised by the Axis Powers. This recognition proves that the Government of Free India had reached the state of statehood,
- (4) That this State had an army which was properly organised, and functioned under regularly appointed Indian officers,
- (5) That the main purpose for which the Indian National Army was formed was for securing the liberation of India, and ancillary to that purpose, to protect the Indian inhabitants of Burma and Malaya in particular during the course of the war,
- (6) That this new Indian State acquired territory of its own as any other State might, and finally,
- (7) That the State had resources on a large scale to fight this war.

On the above facts it is maintained by the defence that, having regard to the conditions under which the Provisional Government had been formed, and was functioning, it was entitled to make war and did make war, for the purpose of liberating this country. If such a Government is held to have a right to make war, a right recognised and accepted by all nations, then according

to International Law two independent countries, or two States, may wage war on each other and those who carry out any action in due prosecution of that war, apart from war criminals, are outside the pale of Municipal Law That is the first proposition

Gentlemen it will be your duty to look into International Law as cited and explained by both sides, and if you are satisfied that the above proposition and others which follow are the accepted propositions of International Law, you may then decide one way or the other At this stage, I may also remind you that the main contention of the Prosecution is that British Courts, and as a matter of fact British Indian Courts are not entitled to look into International Law and administer justice on a question which is purely a domestic matter between a State and its subject This contention may be considered by you at a later stage because for the moment I am explaining to you the contentions of the defence based upon considerations of International Law as put by them

On the first proposition, the defence relies upon a passage at page 6 of Pitt Cobbett's International Law Vol. II, which defines International War and the relation between States making war, and neutral States It is suggested therein that when a war in the above sense is being carried on, the contesting parties assume those relations with each other, and with neutral States, which are regularised by rules of warfare accepted by all nations It is for you to say whether this passage which is given in the book under the heading Relation or State of War lays down that when an insurgent State is making war with a parent State, the individuals taking part on either side are not governed by what is called Municipal Law but by International Law It will be instructive to read the following lines which follow those quoted by the defence

"In cases of civil war indeed where the circumstances are such as to affect the interests of other States in a manner similar to international war, and where the war is waged on either side by a community or body having an organised Government capable of carrying on war according to established rules, a recognition of belligerency is as we have seen, usually accorded And the assumption by a State in its repression of armed rebellion of rights as against other States and their subjects which strictly belong only to a state of war, will have similar effect. In such cases the war will rank for external purposes as a war between States, even though its incidents in other respects may remain not subject to the law (Pitt Cobbett's International Law Vol II p 6)

In my opinion the last lines of that authority tend to show that the fighting between a parent State and insurgents may be considered as a war in its international sense but that that fighting may still be considered rebellion so far as the two warring parties are concerned In such circumstances the relations in respect of other States and their subjects arising out of the fighting may be governed by International rules and the same in respect of the parent States and the insurgent State may still be governed by the domestic law

It will be advantageous to note that the relations of two warring States, for the purpose of considering the consequences of acts done by such, will be later on discussed in connection with rights of belligerency to which I will direct your attention

The next passage cited by the defence is from Wheaton's International Law Vol II, page 98 It reads as under

'War in the absence of any international authority competent to suppress effectively international wrongs has always been held legal by international law'

This passage is part of an exposition by the author on the Nature and Kind

of War" It has been argued on the basis of further quotations from the same book that a civil war may exist, that a subject nation may organise itself and raise its hands to fight against the ruling power and that in making such a war, a stage is attained where a war in the international sense occurs. When such a stage is reached, a *de facto* political organisation of insurgents automatically, it is argued, acquires rights of belligerency. It will, therefore, be essential for you to consider what are the rights of belligerency, who grants them or how they are acquired and whether there is a clear rule of International Law on these points which would commend itself for your adoption. The Prosecution has quoted the following passage from "International Law" by Lawrence at page 328

"Every independent State decides for itself whether it shall make war or remain at peace. If it resorts to hostilities it obtains as a matter of course all the rights of a belligerent. Other States have no power to give or to withhold them. But the case is very different with regard to such communities as are not already States in the eye of International Law, though they are striving to become independent and to have their independence recognised by other powers. Technically, they form portions of old-established States. Practically, each is in revolt against the State organisation to which it belongs in law, and is endeavouring to set up a separate State organisation for itself or to gain control of the existing organisation. By the Municipal Law of the country of which the community is still legally a part, its members are traitors and liable to punishment as such. Yet they are carrying on open war under the orders of authorities analogous to those of recognised States. How then are they to be treated? International Law gives no answer to this question as far as the Government against which they are in revolt is concerned. Questions between it and its rebels are domestic questions to be resolved by internal authority."

Then, quoting several passages from books on International Law, which are set out in the defence arguments for your consideration, it is argued that when a war in the above sense is being fought between a parent State and insurgents, the individuals taking part in the prosecution of such a war are absolved from their liability for acts which would otherwise amount to offences against the domestic law. For the purpose of establishing the above proposition, three American cases have relied upon by the defence. The passage quoted from Hyde's International Law, page 1792, is from instructions for the Government of Armies of the United States in the field. That was during the war between the Federal and Confederate Governments. It may be remembered in appreciating the present proposition that the question of liability of an individual taking part in that war arose in those cases after the war had ended, when the rights of belligerency had already been granted by the Federal Government to the Confederate army. The law cited by the defence would amount to this, that if the rebellious community is accorded the rights of belligerency then the concomitants of belligerency, according to International Law, follow as a matter of right. But you have to see whether International Law recognises that recognition and whether a parent State is obliged to grant such rights and has no choice left in withholding recognition. The passage on page 200 of Oppenheim's International Law which has been quoted by both sides and materially relied upon reads as under

"Recognition by a third State is not as a rule binding upon the parent State. Notwithstanding such recognition, it is entitled to treat insurgents as traitors. But the position is controversial with regard to separate armies which comprise subjects of the enemy who are fighting to free their nation from his rule, and which are responsible to an authority recognised as representing the nation in question. Thus in 1918, during the World War, Great Britain, France, Italy and the United States of America recognised Czechoslovakia as co-belligerents. Similar recogni-

tion was granted in 1917 to the Polish National Army composed to a substantial degree of subjects of the enemy powers. It has been maintained that as in the case of insurgents in a civil war, the enemy is entitled to disregard such recognition and to treat the members of the insurgent army, when they fall into his hands, in accordance with the provisions of the criminal law. The latter opinion is probably that when such recognition is granted by the adversary to large bodies of men effectively organised on foreign soil in anticipation and independent statehood, a point is reached at which the belligerent, confronted with the disaffection and desertion of a considerable number of the subjects engaged in hostilities against him, can no longer without exposing himself to justifiable retaliation assert the provisions of his own criminal law as the only legally relevant element in the situation.

According to this passage from Oppenheim, in a war between a Parent State and an Insurgent State, a stage may be reached when the insurgent army may find itself in a position to take justifiable measures of retaliation against prisoners of war of the Parent State. In such a situation the Parent State may be obliged to grant rights of belligerency to the other party, in the interests of its own people. Thus the governing element in the granting or withholding of rights of belligerency is whether one's own army would be exposed to retaliation by the insurgents if one did not grant them.

It is apparent from the above-quoted opinions of international jurists of repute that in a conflict between a Parent State and an insurgent body the internal relations between the two are a matter of discretion on the part of the Parent State and that no definite opinion based upon a rule of International Law has been expressed by any of them. In such circumstances in matters of such immense importance and consequence, you must consider on which basis the question of belligerency is considered. The doctrine of recognition of belligerency in a war that is being carried on by independent States or by a State and a community thereof is considered by nations subjectively and objectively. It is however normally based on what is called the doctrine of expediency and self interest of the State concerned. The instances of recognition of belligerency cited by the Defence and the opinions expressed by British and other politicians to which they referred were all expressed when Britain as a neutral State, was confronted with the question of according or not according rights to outside warring States or factions. In the first instance quoted, the struggle was between Don Miguel on one side and the Queen Denna Maria of Portugal on the other in the year 1828. The then British Government recognised the party which was not the legitimate Government as a belligerent power. In the second instance, a *de facto* war was being carried on by Sardinia and Venice on the one side, and Austria on the other. Here, too Britain recognised both sides as being belligerent powers as a matter you may consider, of policy and self interest. In the third case, Garibaldi and his officers were waging war against the constituted Government of Italy and *de facto* war was then considered by the British Government in relation to belligerency rights in its own interests, and the course which was previously adopted was followed here.

From the insulated instance of the war fought between the Armies of the Federal Government and the Armie of the Confederate States it may be commended itself to you to assume that International Law recognises the right of a subject nation to take up arms and to engage in a war of liberation, and that in making such a war, irrespective of the result that is to say whether the insurgent body becomes successful or fails, a stage may be attained when the insurgent body may acquire the status of a belligerent power in the eye of International Law so as to acquire all the rights of belligerency which are recognized and accepted under the law of nations.

It is a matter for your consideration whether the **Indian National Army and Its Government** which fought against the Indian Army ever reached that stage when they automatically acquired rights of belligerency, under rules of International Law or whether that stage was not reached at all.

I do not wish to read over to you all the quotations used in the arguments on both sides. To do that at random would be to confuse the matter. What I am trying to do at the moment is to put to you the question involved in clear terms, leaving you to refer to the authorities quoted by both sides, when you come to consider your verdict in closed court.

In the decision that you may make on the propositions laid before you, you will also have to consider whether in a trial were Indian Commissioned Officers of the Indian Army are charged with offences under the Indian Army Act, you are justified by law in considering the rules of International Law, because *prima facie* you are charged with the duty of administering justice according to the Indian Army Act and the laws in force in British India. It has been strenuously argued by the defence that courts in England are bound by law to consider International Law in the dispensation of justice on the question before you. Reliance has been placed by the Defence on Blackstone's Commentaries, page 2237, which reads as under.

"In arbitrary States this law, whether it contradicts or is not provided for by the Municipal Law of the country, is enforced by the royal power, but since in England no royal power can introduce a new law, or suspend the execution of the old, therefore the law of nations (wherever any question arises which is properly the object of its jurisdiction) is here adopted in its full extent by the common law, and is held to be part of the law of the land."

This passage occurs in the Chapter headed "Of offences against the Law of Nations." In support of this proposition, the case reported in (1939) Appeal Cases, page 160, was quoted. A passage from Oppenheim's International Law, Vol. I, page 36, was also cited in the same reference. The gist of the contention of the defence on this point is that all such rules of customary International Law as are either universally recognised or have at any rate received assent of this country are *per se* part of the law of the land, and therefore, that this Court should also consider the rules of International Law as explained by the defence in the dispensation of justice in this case. But, in view of what the prosecution has stated, it will be for you to decide whether courts in England or as a matter of fact those in British India are bound by law to consider unequivocally rules of International Law. I may, in this connection, draw your attention to a passage on page 37 of Oppenheim's International Law, Vol. I. It reads as under.

"British statutory law is absolutely binding upon British Courts, even in conflict with International Law, although in doubtful cases, there is a presumption that an Act of Parliament did not intend to over-rule International Law. The fact that International is part of the law of the land and is binding directly on courts and individuals does not mean that English law recognises in all circumstances the supremacy of International Law."

It has been asserted by the Prosecution that British Law does not permit consideration of International Law in question affecting the State and its own subject. It may having regard to the laws of natural justice, look to and consider the law of foreign states or those of foreign nations (as was done in the case of 1939 Appeal Cases, page 160 relied on by the defence), when one of the parties to the dispute happens to be a foreigner is not *prima facie* subject to the laws of the land. Considering the passage quoted by the Prosecution from Halsbury's laws of England, Vol. VI page 504, (Read) paragraph 623, it should be established to your satisfaction that the law of belligerency as propounded by England and is given effect to

by English courts and for that matter by Indian courts and that such enunciation of rights of belligerency is not inconsistent with any statute of the British Parliament or India Legislature of the laws made under their authority. You will have to consider and decide whether such rules, even if they be more in accord with informed opinion of jurists of repute on International Law, override the existing statute law of the land, namely, the Indian Penal Code and the Indian Army Act. For the same proposition the Prosecution has quoted a passage from Halsbury's Laws of England, Vol. XXXI, page 509, Pr 659. You may think, therefore, as I do, that you are bound by statutory enactments and judicial decisions which are placed before you.

The defence has argued that the accused are entitled to rely on Sec 79 of the I P C. which in substance is a defence granted to an accused, whereby he may plead that his acts were justified by law and therefore, that they are no longer offences in the eye of the law. Here the words "justified by law" are, according to the defence, to be interpreted as 'justified by International Law'. For this proposition, the defence relies upon Blackstone's commentaries referred to above. The Prosecution, on the other hand states that the word 'Law' means the law in force in British India and no other law. There is no definition of the word 'Law' in the I P C but the words 'local law' and 'special law' are defined in Sections 41 and 22 of the Accas law of a place and 'law of a particular subject' respectively. Reliance is also placed on the case, reported in 17 Bombay page 907. In the case four British Indian subjects committed certain acts in an adjoining territory belonging to Baroda State. A criminal prosecution was initiated against one by the other three, which ultimately failed. The person prosecuted then charged the prosecutor and his witnesses in a British Indian Court with offences under Secs 112 183 and 211 of the Indian Penal Code. It was alleged that the accused gave false evidence in the Baroda Court and therefore that they were liable to be punished according to the I P C. Their Lordships in considering the expression by any express provision of law appearing in Sec 191 (which defines giving false evidence) held that the word 'law' used therein meant the law in force in British India.

The offence of waging war has been discussed in arguments by both sides from various points of view. It has been urged in the light of International Law, English law and Indian law. I should therefore place the matter for your consideration in that light.

The offence of waging war is an offence against the duty of allegiance to the State. The offence of high treason in England is an offence against the duty of allegiance to the King. The Prosecution has argued that the accused owed a duty of allegiance to the King as Indian Commissioned Officers holding Commissions in His Majesty's Indian Land Forces and also owed such a duty of allegiance as natural born subjects of H.M. the King. A breach of such a duty of allegiance might amount to an offence of waging war as defined in Sec 121 of the I P C and also might amount to an offence called high treason according to English law. In substance the breach of such a duty, though termed separately in India and England is punishable on the same principles under both laws. According to the Prosecution this has been supported by the authorities cited by them, namely the cases of *King vs Casement* (2,917) 1 K.B. page 98 *King vs. Lynch* (1803) 1 K.B. page 441 *Jeager vs the Attorney General for Natal* (1907) Appeal Cases page 326 and *Aung Hla vs King Emperor* 1 L.R. 9 Rangoon page 404.

(1) In the case of *Casement* this Irishman residing in German territory during the last war persuaded other Irishmen who were prisoners of war in the hands of Germany to form an Irish Brigade with a view to liberate Ireland from British rule and he was charged with an offence of high treason for such acts. He was held guilty of high treason.

(2) In the case of Lynch, a British subject, during the course of the South African War, in breach of his duty of allegiance, changed his nationality becoming a naturalised subject of the enemy State and helped them in fighting against his own King. He was charged with an offence of high treason and was found guilty of such charge.

(3) In the case of Jaeger, it was contended that the accused no longer owed allegiance because the Crown failed to protect them. Such a defence was negatived in that case.

(4) In the Rangoon case, while discussing the offence of waging war, their Lordships of the Rangoon High Court held that the principles of high treason, in consideration of the duty of allegiance, are generally applicable on a charge under Section 121, I P C.

Therefore, the Prosecution assert that the accused before the Court committed a breach of duty of the allegiance that they owed to the King, in making war which they in fact did, even though according to them it was a war for the liberation of India, that is to say, their country.

The question of waging war is now argued by the Defence from a new angle. It is suggested by them that these accused and others, who were similarly placed with them in Singapore, were surrendered to the Japanese by the **British who failed to protect them**, that on such surrender as prisoners of war in the peculiar circumstances of the case, they, as Indians, were faced with the proposition of saving their country from the Japanese and were obliged to take up arms to free it, that in so doing they were justified according to International Law in throwing off the duty of allegiance they owed to the King in favour of what they owed to the country, and that in so doing they have not committed any offence, be it called an offence of high treason or waging war. Reliance is placed on the Declaration of Independence when the duty of allegiance to the King of Great Britain was thrown off by the people of America in favour of allegiance to their country. In view of that instance, it has been argued that these accused were freed from the duty of allegiance that they owed to the King when **they took an oath of allegiance to the Provisional Government of Free India**, who had made a similar proclamation of independence. The defence further contends that there is no obligation whatever which prevents a person who is a prisoner of war from fighting on his own for the liberty of his own country and no question of being guilty of breach of any duty of allegiance arises in such circumstances. In other words, a right to throw off their allegiance to the Crown has been claimed by the defence under a so-called rule of International Law, which I must point out has not been substantiated by any authority on International Law.

It is true that there is no such thing as treason defined in any Act of British India, but the whole law of offences against the State is confined in the Indian Penal Code. Treason is an offence against the State. High treason has been defined as an offence committed against the duty of allegiance as is apparent from the cases cited by the Prosecution. The essence of waging war against the King is that the offence is against the duty of allegiance. It is nevertheless an offence against the State as discussed in the Rangoon case. In considering, therefore, one of the elements of the offence of waging war, namely, a breach of the duty of allegiance to the King, you may consider the aspects discussed above.

Having carefully considered all the arguments and authorities cited by both sides on this subject, it is my duty now to advise you that in my view this Court as constituted has not an unfettered discretion in the matter of admissibility of International Law, and its applicability to the facts of this case. In so thinking I am bound to point out, however, that for weighty reasons you might disregard my advice and come to a different conclusion.

I have put to you the International aspects of this case and the time has now come at which I must leave those matters and consider the evidence on the charges without reference to International Law, but I must remind you that if you should come to a conclusion in favour of the accused on the propositions based upon International Law as argued by both sides and explained by me above, then you would have no need to consider what follows

First (joint) charge against all three accused

All three accused are jointly charged in the first charge under the Indian Army Act, Section 41, with committing the civil offence of waging war against the King contrary to Section 121 of the I P C., the particulars averring that they, together at Singapore in Malaya at Rangoon, in the vicinity of Poppo, in the vicinity of Kyauk Padaung and elsewhere in Burma between the 15th November 1942 and 28th April 1945 did wage war against His Majesty the King Emperor of India. That section of I P C reads

‘Whoever wages war against the Queen or attempts to wage such war or abets the waging of such war shall be punished with death or transportation for life and shall also be liable to a fine’

The fact that the word Queen is used in the section and ‘King in the charge need not trouble you because Section 13 of the I P C provides that the word Queen denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland. Waging war against the King is of course only constructively possible in India because the King is not in India and there can thus be no war waged against him in a personal sense. But it has been long held that the wording of the section may be constructed in the figurative sense of the King as head of the State and as the external embodiment of lawful constitution and Government. Here in India the external embodiments of His Majesty the King Emperor of India are his lawfully constituted Government of India the other agencies by which his Government is carried on as also his Army in India. It is in that sense, in the sense of waging war against the Majesty of the King rather than in his personal capacity, that the accused officers are arraigned before you

The words ‘waging war’ are plain words and they are not a term of art which would call for any lengthy explanation. Quoting a well known authority (Ratanlal—‘The Law of Crimes Sixteenth Edition page 270) these words seem naturally to import a levying of war by one when throwing off the duty of allegiance arrays himself in open defiance of his Sovereign in like manner and by the like means as a foreign enemy would do, having gained a footing within the realm. Using the words ‘waging war’ as in their straightforward meaning it is clear, for example, that large numbers of persons in the Indian Army have, during the course of the late war waged war against the Japanese Empire although they may not have been actively engaged in operations against the Japanese forces and although they themselves were not at any time fighting in the front line. Vast numbers of Indian and British troops were as you are aware engaged in that campaign on the lines of communication, in Base areas, in training in India to take their places in the forward area, and in defence of the coasts of India from Japanese attack. Can it be said that these persons were any the less waging war against the King’s enemies because they were not in the forefront of the battle? Nor is strict proof required that the Japanese were enemies of His Majesty, inasmuch as Section 57 of the Evidence Act permits you to take judicial notice of such matters of notoriety, as the commencement, continuance and termination of hostilities between the British Crown and any other State or body of persons. I shall not therefore attempt to lay

down a definition of what constitutes waging war against the King and it will be for you to decide very shortly as a question of fact whether the acts and conduct of the accused individually can be said to justify the application of the words in this case. I would commend to you, however, the remarks of the Chief Justice in an English case quoted in a 1943 decision of the Patna High Court in an appeal decision on a charge of waging war against the King (Jubba Mallah—45, Cr. L. J. 1944, page 608)

I think the rule of law may be laid down in a few words in this manner ; to constitute high treason by levying war there must be an insurrection, there must be force accompanying that insurrection, and it must be for the accomplishment of an object of a general nature. But if all these circumstances are found to concur in any individual case that is brought under investigation, that is quite sufficient to constitute a levying of war.

With regard to those words “of a general nature” they are of course intended to convey that assembly and rioting with the object of accomplishing some private enterprise, not resisting or calling in question the King’s authority, cannot be regarded as waging or levying war against the King. But where the object of the overt acts of accused persons is shown to be to subvert the King’s Government in India, then it may assume the character of an enterprise of a general nature and amount to the offence. It does not matter whether the war is waged beyond the boundaries of British India. Nor are the numbers engaged and the manner in which they are equipped and armed a criterion of the offence, as was decided in the case to which I have already referred. I would just point out, however, that the Calcutta High Court has decided that the mere collection of men, arms and ammunition for the purpose does not amount to waging war (Barindra Kumar Ghose, 37 Cal 467). “Insurrection” is defined in the Oxford Dictionary as the “action of rising in arms of open resistance against established authority of Government restraint”.

There is now one important matter to which I am bound to draw your attention, not only in connection with the first charge but as bearing upon all charges in the charge-sheet. I do not know how you will regard those **prosecution witnesses** who joined the I.N.A. and took part with the three accused before you in the various transactions set out in the charge-sheet and with the same object in view whatever it may have been. I can only say this that if at any time you should consider that they were **accomplices**, that is to say, **guilty associates in crime**, then it is my duty to point out to you the danger of convicting upon any charge upon **uncorroborated evidence of an accomplice**. An accomplice may be considered to be a person unworthy of credit because his evidence is tainted by the fact of his complicity and that he is now willing to turn round and give evidence against those with whom he was associated. The warning which I am required to give you is that you should very carefully consider the danger of convicting any of the accused on the uncorroborated evidence of an accomplice, although at the same time point out that it is within your legal province to do so if you think fit, that is, if you consider him credible. The corroboration required is independent testimony which confirms in some material particular not only the evidence that the crime has been committed, but also that the accused committed it.

III-treatment of Indian Prisoners of War

Before dealing with the evidence on the charge of waging war, I propose to put to you these transactions concerning harassment and ill-treatment of Indian prisoners of war in Malaya, which are alleged to have been carried out with the object of forcing them to join the I. N. A. And I must preface my remarks by emphasising the fact, which is common both to prosecution and defence alike, that

whatever be the relevancy of this aspect of the case, there is not, and there never has been the least suggestion that these three accused before you were ever personally engaged in the ill-treatment of prisoners or even that they were at any time present when men were tortured or ill-treated. You will recollect that at an early stage of these proceedings the Court called upon Counsel for the Prosecution to show the relevancy of these matters. Counsel then argued that the evidence which he proposed to lead would show that the accused were aware of what was going on as instanced by the fact that at various times they had made veiled threats as to what would be their fate if men did not join the I N A. He further argued that ill treatment and torture were committed so openly and notoriously that he was entitled to show that all three accused must have been aware of what was going on, and with that knowledge they had urged upon prisoners the necessity of joining the I N A. On these grounds you decided to admit the evidence. Counsel for the prosecution has conceded in his closing address, and you may consider very properly so that the evidence does not support his original contention that the accused held out any such veiled threats to POWs. In fact as you will remember the evidence shows that on some occasions the accused emphasised the voluntary character of the I N A. On the other hand Counsel still maintains that these matters were of such notoriety that the accused could not but have been aware of them. But as he rightly stressed there can be no such presumption that the accused had any such knowledge because on this issue like every other issue it is for the prosecution to satisfy you that they had the knowledge and not for the accused to show that they were ignorant of the matter.

Evidence of ill treatment was deposed to by Capt. Dhargalkar who said that on the 18th August 1942 he was removed to a concentration camp near Bidadari Camp. When he arrived there he was not treated as an officer. He was made to salute Sikh sentries or to bow to them. He had to fall in with other prisoners to collect his food which acts extremely bad consisting merely of rice, sometimes dal and some form of spinach. He was kept in an 80-pounder tent which was full of white ants and on one occasion was refused treatment at the hospital. He stated that this establishment was entirely run by I.N.A. personnel. On the 3rd September 1942 he was removed to an officers' separation camp at Bidadari which had a notice board outside it with that designation. Again, conditions were relatively bad. Whilst there Capt. Shah Nawaz and Capt. Sahgal visited the camp on occasions. He stated that the gist of their remarks was 'Why don't you all join the I.N.A. rather than waste yourselves living under these conditions?' On the other hand in cross-examination he admitted that the gist of Capt. Shah Nawaz's remarks was merely 'Why do you not join the Indian National Army?' and on further pressure, that he could not single out from the others what Captains Shah Nawaz and Sahgal had really said and could only give a general impression, without regard to who said what. You will observe that Lieut. Dhillon is not in this picture at all. The question for your decision now is, did this ill treatment occur in fact and if so whether the accused in visiting the separation camp and talking to the officers they knew of it and were using the conditions as a lever to make them join the I.N.A.

Allegations of individual ill treatment were also made by Jemadar Mohammed Nawaz that on 13th September 1942 he along with others was taken to a concentration camp about 8 miles from Buller Camp. For three hours on the first day, they were made to carry cowdung in sacks suspended on bamboo poles, and here made to double with these loads and were beaten by sentries as they ran along. Finally they were made to mix the cowdung with ash. He was kept in the camp for six days and made to do fatigues. Although that

witness stated that he never joined the I N A I must remind you that Capt Irshad (P W) contradicts that statement and is positive that on the occasion of Id-ul-Fitr 1942 he went to a camp in Singapore where Jemadar Mohammed Nawaz, together with a few other V C O s signed the I N A enrolment papers Capt Irshad also stated that this witness had gone to the Detention Camp voluntarily as a protest against the arrest of Sub Ahmad Khan on a charge of stealing

I now come to what I may describe as the Kranji Camp incident, in which Hav Muhammad Sarwar alleged that on one occasion a subedar and a jemadar accompanied by a guard arrived at the camp and ordered the men to fall in The Jemadar delivered a lecture exhorting the men to join the I N A, which they refused to do The Jemadar and Subedar then took out their pistols and started firing on them and also ordered the guard to fire on them, which they did, you will remember that he stated that two of the prisoners of war were killed and that they attacked the guard and that one of them named Saidara Singh was hit on the head with a spade and killed Later, the whole of the 7/22 Mountain Regiment was taken to Concentration Camp, where the witness together with seven others was beaten and he himself was rendered unconscious It is contended by the defence that this is all a story concocted to embroider the true facts, which were that on the day prior to the firing incident they had refused to be formed into parties of 323 men each, that the guard had come there to arrest the ring-leaders and that the men resisted and were shot in consequence Never the less, that was put in cross-examination and denied and there is no evidence otherwise in support of it

A similar allegation of mass ill-treatment is adduced by the prosecution in what, I shall describe as the 2/9th Gurkha Rifle incident The witnesses to this were Havildar Wolet Bahadur and Rifleman Rabi Lal The former stated that on 24th September 1942 at about 7 p m the battalion was parading to hear a lecture by an I N A officer After a reference to their refusal to join the I N A the followers were called out and beaten, and upon the whole unit standing up in protest, an armed guard present fired two or three rounds in the air The I N A officer then said, "Are these Gurkhas your fathers that you are not shooting at them?" Wolet Bahadur then went on to say that at this point the men started to move forward, upon which the guard fired wounding several of them The second witness Rabi Lal gives an account of the same incident, but he omits any reference at the men moving forward on the first round being fired, and he denies that there was a dispute between the Gurkhas and the Japanese, about fatigues (which Wolet Bahadur admitted) attributing the firing to the fact that the men would not join the I N A and had stood up in defence of orders Rabi Lal carries this incident a stage further inasmuch as he deposed that the whole unit was immediately sent to a concentration camp at Bidadari, where they were confined in a very small open enclosure and left there for the night On the following morning they went back to their camp

Counsel for the defence argues that the above is a distorted account of this affair and that the real cause of the trouble was that, as Wolet Bahadur admitted, the men had refused to do fatigues for the Japanese and were adopting a stubborn attitude which ended in their attacking the guard and being fired upon in consequence

Besides these instances of mass ill-treatment there are other cases in which individuals gave evidence before you that during 1942 as a result of their refusal to join the I N A they had been sent to a concentration camp Concerning that camp the common factors may appear to be that men were beaten, badly fed, made to

carry earth in sacks slung on bamboo poles and forced to salute the I.N.A. sentries in the camp. Such treatment, for instance, is deposed to by Jemadar Mohammed Hayat (P W 12) who stated that between July and September 1942 he had been to a concentration camp three times together with 11 others of the 1/4 Bha walpur Infantry, and that he had been told that "if we did not volunteer we would continue to be beaten like this until we died." It was put to this witness in cross-examination—and denied—that the real reason he and the others were sent to the camp was because there was a charge against them of having committed the theft of seven cows from civilians, and that after due investigation they were released. Another example occurs in the evidence of Jemadar Sarup (P W 15) who has the same story of being beaten in a concentration camp and made to carry earth in sacks during the month of July 1942. It is contended by the Defence that in his case the story is merely an invention in order to save his skin with the Army authorities after he had failed to report at his depot immediately on arrival in India. These statements are contested by the Defence who suggest that all these stories are embroideries of the real truth. In fact there was a detention camp at Bidadari—not a concentration camp—to which persons guilty of crimes of ill discipline were sent and where a certain amount of fatigues were imposed as was proper under the circumstances. These fatigues were merely ordinary manual labour, for example carrying earth for the making of a garden, but have been magnified into torture and atrocities in order to suit the witnesses' own ends.

The real issue for your consideration then is whether those instances of ill-treatment are fact or fiction and whether if they are true they were so notorious at the time that those can be no reasonable doubt that the accused knew of them. I must in that connection warn you as clearly and unambiguously as I can that the passage relating to torture or humiliation and of men being sent to the concentration camp contained in a booklet named 'My struggle' by Rash Behari Bose (Ex 5A) cannot by any means or in the very least be regarded as evidence of the truth of that allegation. If the extract from that booklet has any probative value it is certainly not as going to show that a concentration camp existed or that torture or harassment were inflicted on Indian POW to join the I.N.A.

With regard to the special submission handed in by Counsel for the Defence in his closing address I advised you that at that stage you could not decide questions of fact piecemeal and I further advise you now that under the rules by which you are bound an application to exclude evidence from the record of a court martial cannot be entertained. The position is that if you accept the truth of what the prosecution witnesses state and if apart from any presumption which you are not entitled to make you are satisfied that the accused knew of those atrocities and were recruiting for the I.N.A. with that knowledge, you may regard that evidence as well satisfy you that these matters were so notorious that the accused or any one of them must inevitably have known of them and used them, you must dismiss the whole of this atrocity evidence from your minds as being wholly irrelevant and pay no further attention to it whatsoever.

As regards the I.N.A.—the instrument by means of which it is alleged that the accused officers carried on the waging of war—I do not propose to deal with this subject at great length because you have heard a great deal about it and it will be fresh in your minds. Not only that but there are a large number of exhibits which are in evidence before you dealing with its organization and activities throughout the period under review and these you will no doubt peruse when you come to consider your verdict in closed court. Moreover you may agree that there is really no issue as between the prosecution and the defence as to the

existence of this army and its activities throughout the period, whatever may be the inferences which the respective parties ask you to draw therefor

You will remember that what has been called the first I N A came into existence on the 1st September 1942 as a result of earlier efforts by Capt Mohan Singh, and in pursuance of certain resolutions which were passed at a conference in Bangkok in June 1942. There are a number of these resolutions which are contained in Exhibit "ZZZZ", but in relation to the I N A it was agreed to form an army with the objects, *inter alia*, of conducting operations against the British or other foreign powers in India and of securing and safeguarding Indian national independence. At about the same time a Council of Action consisting of Rash Behari Bose and six members came into existence to supervise the general policy to be adopted by the I N A. The organization of the I. N. A. at that time is contained in Exhibit DD, the major units being given as three Guerilla regiments, the Hind Field Force Group, and various ancillary units. The total strength of the force at that period can only be a matter of conjecture, since the figure of 10,000 given by Lieut Nag was the merest hearsay and of no value whatsoever. There is evidence that in November 1942 an advance party of various units were sent to Burma, but very shortly afterwards, in December 1942, Mohan Singh was put under arrest—whether by the Japanese or by Rash Behari Bose being a conflicting issue—and the first I N A was then broken up, the badges and all records being destroyed. I would point out, however, that according to Subedar Major Baboo Ram the headquarters at Bidadari continued to wear I N A badges even after its dissolution in December 1942, although the rest of the men discarded them.

By January or February 1943 it is in evidence that Rash Behari Bose and the administrative committee of the POW camps were recruiting for the formation of a new I N A. In March or April a "Directorate of Military Bureau" had come into existence, the purpose of which was to act as a supreme headquarters of the new force. You will find the organisation of this Bureau in Exhibit FF before the Court which details the establishment of eight major departments dealing with "G" Administration, D P M, Military Secretary, Finance, O T. S., Reinforcement Group, and Enlightenment and Culture.

At about the same time the preparation of the I N A Act was in progress, a document which is before you as Exhibit JJ. In regard to that Act there has been a certain amount of contention in relation to the inclusion of whipping as a punishment for certain offences. Counsel for the defence has pointed out that in the aggregate Indian legislation does sanction corporal punishment and that to that extent its incorporation in the I N A Act is no more objectionable. He had handed in a summary of the provisions relating to whipping in force under the Indian Army Act, with a view to establishing that the powers of whipping under that Act and the I N A Act are similar. As I pointed out at the time, there is an initial error in this summary in setting out the powers of whipping in Indian Army Act, Section 22, the correct interpretation of which is that on active service a commanding officer may award an unenrolled menial servant a maximum of twelve strokes with a rattan for an offence in breach of good order. Outside that section there is no provision whatever in the Indian Army Act itself for whipping, nor has there been since 1920, when such punishment was finally abolished on the repeal of the Indian Army Act, Section 45. I feel bound to point out that there appears to be another error in this summary inasmuch as Counsel has stated that the "Military Operational Area (Special Powers) Ordinance, 1943" authorises whipping as a punishment for members of His Majesty's Indian forces. As a matter of fact, military personnel cannot, of course, be tried by courts constituted under that Ordinance, as is clear from Sec 4 (2) of the Ordinance which specifically

excludes such personnel. I am not suggesting that this matter is of any great importance, but it is necessary to put an accurate picture before you. Moreover you should bear in mind that there is no suggestion that the accused or any one of them had a hand in drafting this I N A. Act or were parties to the inclusion of whipping therein

Resuming the main theme of my address it appears that the organisation of the new I N A. closely followed that of the first, except that there is evidence that in September 1943 a 4th Guerilla Regiment known as the Bose Regiment was raised. Prior to that in August 1943 the direct command of the I N A was taken over by Subhas Chandra Bose. In his proclamation dated 25th August (Exhibit (II) you will find there set out the object laid down for the I N A. and in which refers to it as 'the instrument of India's liberation

At the beginning of 1944 the main headquarters of the I.N.A. had reached Rangoon, and there is evidence that the Bose Regiment, at least commanded by Capt. Shah Nawaz was on the Haka Falam front shortly afterwards. You will remember various accounts of prosecution witnesses who deposed to the capture of a party of Chin levies and of patrolling activities against a British Indian regiment. Havildar Nawab Khan for instance, recounted the disposition of that regiment and of preparations for an attack on the British in the Klang Klang area which was to be put in on the 15th May. According to a diary which has been produced as being that of Shah Nawaz for 1944 these operations lasted until June when a retirement took place the regiment being finally concentrated at Pynmana in September 1944. In connection with those operations I would also draw your attention to the evidence of the Japanese General Katakura who drew you a diagram of the part played by the I.N.A. in that campaign (Ex. WWWW)

There is a large volume of evidence dealing with the operations of the I.N.A. round the area Popa Kyauk Padaung in the year 1945, and in which the whole of No 2 Division I.N.A. was engaged. It also appears that at about that time No 1 Division was entrenched round the Pynmana area, but it is with regard to No 2 Division that the witnesses mainly speak. From Bhal Singh (PW) for instance, you hear of the digging of trenches round Popa hill and of a skirmish with a British patrol in which two jeeps were captured. Another witness (PW 21) deposed to a battle in the Popa area in which his platoon was working in conjunction with a Japanese platoon which ran away when fired upon. No 2 Infantry Regiment commanded by Capt Sahgal reached the Popa area from Mingaladon in March. There Havildar Ghulam Mohammed (PW 23) states that operation orders were issued for an attack on Pynbil village in the Legyi district which took place in due course, and in which fire was exchanged with men of a British Division. The operation order (Ex. XX) possibly gives the full details of this attack, the intention of which is stated to be to annihilate the enemy garrison in Pynbil on the night of March 30-31. The report on the Legyi operations is contained in Ex 1 LL which bears the signature of Capt Sahgal. On or about 12th April 1945 No 2 Division retired from the Popa area and No 2 Infantry regiment of that Division surrendered some time later at a point north of Allannmy. In that connection you will remember Lt. Col. Kitson's evidence with regard to the surrender of its Commander Capt Sahgal.

Finally you heard that about 6000 I.N.A. remained in Rangoon after the Japanese had evacuated it and Capt. Arshad told you how that force kept order in Rangoon and protected the interests of Indians. He also told you of the orders given to him by Wing-Commander Hudson and later by Brigadier Lauder. Although none of the accused were present at that time it is a question for your decision whether the status of prisoners of war was given to that force and whether if it was it could be held to govern the status of the accused at the time when they surrendered.

I must, however, point out to you that Capt Irshad said that Brigadier Lauder told him that he was not in a position to accept the I N A as POW

There is no dispute as between prosecution and defence that all the three accused joined this organisation and subscribed to its avowed purposes, whatever may be the relatively less important differences with regard to place, time or date. Never the less a joint trial does not entitle you to consider the charge collectively as against all three. The joint nature of the charge, in fact, has reference only to the procedure of joint arraignment and of hearing the evidence against all three at one and the same time, and certain other incidental matters, but otherwise the accused are entitled to the benefit of having the evidence weighed and considered and your finding arrived at separately and distinctively in each individual case. Moreover, you must not consider the evidence on one of the charges in the charge-sheet as corroborating or complementary to the evidence on another, since they are all separate and distinct charges.

The period over which this charge extends is a lengthy one and you have listened to a considerable body of evidence relating to times antecedent to and succeeding that period. Such evidence may be relevant either as showing preparation or as cause an effect or otherwise, but you must not in considering your finding take into account against him any overt act of any particular accused outside the period 15th November 1942 — 28th April 1945 which dates are specified in the first charge as being the commencement and termination of the period during which the accused are alleged to have waged war against the King.

I will now briefly summarise the evidence in relation to each accused as to their connection with the I N A. Capt Shah Nawaz Khan was commissioned in the Indian Army in 1936 and was promoted to T/Captain on 24 3 41 (Ex U) which rank he was shown as holding in April 1945 Indian Army List. According to his own statement, he surrendered at Singapore on 15th February 1942. During the earlier part of 1942 he was commanding at Neesoon Camp and you have evidence that in March he read out to a meeting of all the officers there the Bidadari resolutions. In April he is quoted as stating in a lecture that "the I.N.A is a very good movement and I have offered myself as a volunteer." In September at the formal inauguration of the first I N A he was a Second Lieut in the movement and by 15th October he was a Lieut-Colonel. On the 26th November (according to Ex HH) he was appointed to command the I N A Cadet Training School. In April 1943 according to an order signed by Capt Sahgal (Ex FF) he was posted to the newly formed Directorate of Military Bureau as Lieut-Colonel, Chief of the General Staff. In August 1943, Havildar Ghulam Mohammed (P W 23) stated that he addressed a meeting at Neesoon at which he said that the I N A had been formed for the liberation of India and it would fight not only British Imperialism but also those who would put obstacles in the way of India's freedom. Pertaining to this period, there is a letter issued by him as C G S regarding a "Scheme for the Reception and Management of the Indian Soldiers in Burma."

At the meeting on 21st October 1943 at which Subhas Chandra Bose proclaimed the Provisional Government of Free India he was, according to Lieut Nag, nominated as a Minister and signed the proclamation issued on that occasion. During the same month he was commanding the Bose Regiment according to the evidence of Sepoy Dilasa Khan.

In 1944 he took part with that formation in the battle for Imphal and Capt Irshad states that he operated as far north as Kohima. I shall not again refer in detail to this operation which I have dealt with in connection with the evidence of General Katakura (P. W 5), and others. By December of that year according to his own statement he was commanding No 1 Division I N A at Mandalay.

and shortly afterwards was given command of No 2 Division I.N.A., a new division which was shortly moving to the front. You will recollect that it was this division which operated in the Popa Kyauk Padaung area, took part in the attack on Pyinbin and the Legyi operations and you will find amongst the exhibits the operation order for this attack (Ex. XX) and an Information Report to Major Nawabara regarding the Legyi operations, both stated to be signed by Capt. Shah Nawaz. In April 1945 the division retired from Popa area and fell back to Pegu where he states he was captured by the British forces.

Capt Sahgal was commissioned in the Indian Army on 1 2 39 (Ex. S) He was promoted T/Captain on 5 3 41 a rank which he is shown as holding in the Indian Army List for April 1945. He was taken prisoner at the fall of Singapore on 15th February 1942 and in August of that year was at Bidadari Camp. He joined the I.N.A. on its formation in September 1942 and according to Subedar Major Babu Ram was Adjutant of the Hind Field Force Group for the remainder of that year until the first I.N.A. was broken up in December.

In January 1943 he is alleged to have addressed Naik Santokh Singh (PW 6) and others urging them to join the new I.N.A. which was going to be formed. By an order signed by himself dated 10 4 43 he was posted from the Hind Field Force Group to the Directorate of Military Bureau (Ex. GG). By 17 4 43 he was signing as Major Military Secretary Military Bureau Directorate (Ex. FF). On the 21st October 1943 he is said to have been present at the meeting at which Subhas Chandra Bose proclaimed the establishment of the Provisional Government of Azad Hind.

At the beginning of 1944 according to Lieut. Nag he had moved from Singapore to Rangoon where he continued to function as Military Secretary, although he was at some time D.A.G. if you accept the evidence of Lieut. Nag who took over these duties from him in August 1944.

In January 1945 he was commanding No 5 Guerilla Regiment which was then renamed No 2 Infantry Regiment and you will remember Lt. Naik Mohammed Sayeed's account of Subhas Chandra Bose's inspection of the regiment before it left for the front. By the third week in January 1945 the same witness states, the regiment had moved and Havildar Ghulam Mohammed states that the accused arrived with him at Popa on 26th February. At some period in the early part of 1945 he was temporarily commanding No 2 Division during the absence of Capt. Shah Nawaz, a fact which you may consider is borne out by the entries in his diary for 1945 which Lieut. Nag produced and in which he said that he recognised the accused's handwriting.

During March, Capt. Sahgal held several conferences at Popa at which plans for attacks on the Allies were discussed and he said that it was now either a case of attacking or of being attacked. Ghulam Mohammed states that on 13th March Capt. Sahgal gave orders for a two-company attack on Pyinbin. On 29th March he is said to have been in action against British troops near Seikteen. On 12th April Popa was evacuated and on 23rd April he was captured by the 2-2nd Gurkha Rifles near Allanmyo.

Counsel for the defence has raised the issue that Capt. Sahgal surrendered to Lt. Colonel Kitson as a POW and that under the terms of the surrender which he says were offered and accepted the accused is entitled to all the privileges of a POW. You will recollect that Lt.-Col. Kitson stated that there was a surrender note which he has since destroyed in which it was stated that 30 officers and 500 troops of the I.N.A. wished to surrender. On that point the Advocate-General points out that Capt. Sahgal told Lt. Col. Kitson that he had fought for what he considered to be right and that now that he

had lost he was prepared to take the consequences. Lt-Col Kitson also said that he told Sahgal that his (Sahgal's) disposal had nothing to do with him. It is of course a matter for you to decide in the light of Lt-Col Kitson's evidence and in the light of your own military knowledge whether you consider that belligerent rights were by words or conduct accorded to Capt Sahgal on that occasion and whether the Company Commander of the leading Company of the 4-2 Gurkha Rifles to whom the surrender was made could by the custom of war either grant or recognise such rights on his own initiative.

As to the association of Lt. Dhillon with the Indian National Army, there is evidence that he was commissioned in the Indian Army on 3-4-1940 and was promoted to Lieutenant on 30-4-1941, a rank which he is shown as holding in April 1945 Indian Army List. On the 5th February 1942 he was captured at Singapore on its surrender. In February or March he was at Neesoon Camp where he delivered a lecture on the religion of the Japanese in which as is alleged, he said that Indians should join hands with them to free India. He joined the first I N A at its inception and was promoted Captain in that force on September 10, 1942 (EX BB). On 15th September he was promoted Major (CC). At the beginning of February 1943 Subedar Major Baboo Ram states that he saw him at Bidadari wearing I N A badges. According to Lieut Nag he was at I N A Headquarters, Bidadari, in May 1943 in Q branch. In October of that year he attended the proclamation of the Provisional Government of Azad Hind by Subhas Chandra Bose in Singapore. By November 1943 he was Second in Command of No 1 Infantry Regiment I N A. Later he was transferred to No 5 Guerilla Regiment and was again Second in Command in charge of training, until he left that regiment in June 1944. In September 1944 he arrived in Burma, was given Command of No 4 Guerilla Regiment and went to Mandalay to take command, from where it might appear that the regiment moved to Myingyan where it was employed, according to Hanuman Prasad (P.W. 19), in digging trenches. You have heard evidence that in February or March 1945 this regiment was coming back to Popa in small parties, and subsequently moved to Nyaungu where it was posted in a defensive position on the Irrawaddy. It was here that Havildar Sucha Singh deposed that there was heavy shelling after which 84 men of the unit surrendered to the British on 14th February 1945. There are a number of Intelligence Summaries addressed to units and formations as well as to Hikari Kikan at about this time, all said to be signed by Dhillon (Exhibits TTT, XXX, ZZZ) and a letter dated 20th March from Dhillon to Subhas Chandra Bose (Exhibit AAAA). Finally there is the message signed by Dhillon in which he states "we will fight up to the last."

You will appreciate that in the main these facts are not disputed by the defence who do not deny that the accused joined the I N A and took part in operations against the Allies. All the accused, however, stress that the I N A were purely a voluntary army, composed of willing volunteers and that they were throughout actuated by the highest motives of patriotism. Motives of course cannot excuse an act if it is criminal, but at the same time if you accept what the accused say—and it is not denied—then if the accused were to be convicted you might consider that weighty mitigating circumstances exist in all the circumstances of the case. I shall now leave my review of this charge, reminding you that the accused's real defence to this charge is based on their position under International Law to which I have already referred.

2nd, 4th, 6th and 8th Charges

I now turn to a consideration of murder charges against Lt Gurbaksh Singh and Dhillon. These consist of four charges, the 2nd, 4th, 6th and 8th charges in the

charge-sheet on which that officer alone stands arraigned before you. Each of them is laid under I.A.A. Sec. 41, in respect of the civil offence of murder and the particulars aver in each instance that at or near Popa Hill in Burma on or about 6th March 1945 he caused the death of a particular person. In fact, as you will remember the case for the prosecution is that four men were all shot on the orders of Lt. Dhillon at one and the same time so that all four charges refer to one and the same incident. The only difference therefore between the four charges is that each alleges the death of one particular man only. Thus the second charge alleges the murder of one Hari Singh the fourth the murder of one Dulh Chand the sixth the murder of one Daryao Singh and the eighth the murder of one Dharam Singh. It will be convenient for me to state the law and to review the evidence of all four alleged murders together, but, at the same time, it is hardly necessary for me to remind you that they are four separate and distinct charges which you must consider separately and which you cannot amalgamate in your minds as being one charge against Dhillon of the murder of four persons.

Since murder is common to all four charges I shall now endeavour to put before you the elements of the offence of murder as relevant to all. The law as to the substantive offence of murder is contained in Secs. 299 300 & 302. You will note that Sec. 299 defines the offence of 'culpable homicide.' That is a generic term which includes all forms of the culpable killing of one human being by another, of which murder is only one, and it is thus only by reference to Sec. 300 that the circumstances in which culpable homicide becomes murder are made clear. You will observe that Sec. 300 provides that culpable homicide is murder when the act by which the death is caused is done with any one of the four specified forms of intention or knowledge, as the case may be, subject to five exceptions, any one of which would if proved by the defence, reduces the crime of murder to one of culpable homicide not amounting to murder. In all these four charges however the defence have not relied on any of these exceptions, so that it is not necessary for me to put them before you in detail. Furthermore it is the case for the prosecution that in every case Lieut. Dhillon had an express intention of causing the death of the person named in the charge, so that you may consider that whilst not excluding consideration of the various forms of knowledge referred to in Sec. 300 your task will be one of deciding whether the accused Lt. Dhillon committed culpable homicide amounting to murder by causing the death of the person named in each charge respectively with the intention of causing death.

The intention of the accused, express or implied, thus becomes a very important factor in your deliberations upon these charges. By intention is meant the expectation of the consequence in question but it is a state of mind and since we cannot see into a man's mind to see what he is aiming at or intending it is necessary to look at his overt acts and his conduct in the surrounding circumstances bearing in mind that it is a presumption of law that a man must be taken to intend the natural consequences of his acts. Intention does not imply or assume the existence of some previous design or forethought. It means an actual intention the existing intention of the moment and no proof of intention beyond that which the act of itself supplies is required. I might add that these words of mine apply not only to these four murder charges but to every charge which is now before you for decision.

The evidence on which the prosecution rely to establish their case against Lieut. Dhillon may be briefly summarised as follows. One day in the third or fourth month of 1945 a man named Gian Singh, who at that time belonged to No. 7 Battalion Nehru Regiment was fallen in with his company (B Company) in a nullah in the Popa area. He described this nullah as having sides about 20 ft. high and with an average width at the bottom of about 5 ft. although it was wider in places.

Whether it had more or less perpendicular sides is not apparent from the evidence. There were about 30 men present and they were standing in two lines or files, the witness being in the middle. The men were facing forward towards where the accused Lt Dhillon was standing in front of the two groups. At the end of the nullah was a trench at right angles to the bed of the nullah and about 20 yards away from where the witness was standing. Four men whom this witness did not identify were in the trench with their hands tied behind their backs.

Lt. Dhillon made a speech in which he said that these four men had tried to go over to the British and so they were sentenced to death. He called for volunteers to shoot them. The two men in the leading file took one pace forward and they were joined by another man. The names of the three men were Hidayatullah, Kalu Ram and Sher Singh. The two former belonged to the company and the latter to Brigade Headquarters Military Police. Dhillon ordered the first man out of the trench and commanded Hidayatullah to shoot him. This he did, and the man fell to the ground. Similarly Dhillon ordered the second man out of the trench and he was also shot by Hidayatullah on Dhillon's order. The third and fourth men were similarly shot by Kalu Ram on Dhillon's order. Finally, Dhillon ordered Sher Singh to finish them off with his pistol and this man fired at them from a distance of about five yards. You may wish to consider how much of all this the witness saw, bearing in mind that he was about 20 yards away and standing in a confined space in the middle of the company. At any rate, he states that when the men fell down after the first shots he did not see them then, although he says that he saw the four bodies buried in the trench.

The other witness to this alleged shooting is Narsing Sepoy Abdul Hafiz Khan who testified that one day after bringing a patient to the Popa area hospital he was returning to No 7 Bn Hospital when he saw some men of No 7 Bn assembled near a nullah. Apparently out of curiosity he went closer and saw four men whose hands were tied behind. These men were made to sit in a trench. He heard the accused Lt Dhillon, who was present and who was then commanding No 7 Bn tell the company that these four men had gone over to the enemy and had been caught and therefore their punishment would be death. He then gives much the same account of the shooting as Gian Singh gave that he says he saw the men after the first shots and that they were moving. On Dhillon's orders Sher Singh then went up to them and fired his revolver, putting one or two bullets into each one of them. He did not see the bodies buried. He can give no idea of when all this occurred save that it was in 1945.

Now if you believe these two witnesses, Gian Singh and Abdul Hafiz Khan, that Lt Dhillon caused four men to be shot there are still two matters on which the Prosecution must satisfy you beyond reasonable doubt before you would be justified in convicting the accused of murder on these charges. Both of them are matters on which formal proof is required in every charge of murder, but they are vitally important, so much essential elements in all charges of murder that if you are not fully satisfied on any one of them in respect of all or any of the four charges, you are bound to acquit the accused forthwith on such charge. I refer of course to the following two matters.

(1) There must be adequate direct or circumstantial evidence of the identity of the four men shot as will convince you that they were in fact Hari Singh (2nd charge), Duli Chand (4th charge), Daryao Singh (6th charge) and Dharam Singh (8th charge). The burden of proof on the prosecution will not be discharged by their merely proving that four unidentified men were shot on that day.

(2) You must be satisfied on adequate and admissible evidence that Lt Dhillon caused the death of Hari Singh, Duli Chand, Daryao Singh and Dharam Singh respectively and that the death of these men, in fact, took place.

These two points are vital in any trial and the more so in this case because they are both very much in issue in connection with the defence to these charges with which I shall deal later

As to the first point, neither of the two prosecution witnesses have in any way identified the four men. Abdul Hafiz Khan says he had never seen them before and Gian Singh stated that he did not know their names. He added that Major Dhillon read out that these men were Jats from No 8 Battalion. But there are on record two Crime Reports (Exhibits KKK and WWW) not counter parts in that they differ in detail although both contain in the heading the names of Sepoys Hari Singh, Duli Chand Darya Singh and Dharam Singh. Lt. Nag who produced both these documents stated that the words in both exhibits 'Remanded for Divisional Comd's Trial' and the signature are in the handwriting of Lt. Dhillon with whose handwriting and signature he was familiar. In both there are entries in the 'Offence' column which I shall now proceed to read. Both crime reports are headed I.A.F. Dgori in a form which you may recognise as being the ordinary form in use in the Indian army in which the sentence awarded is you may consider entered in the normal column under Punishment awarded. Both allege that the date of offence was 28.2.45. Under Lt. Dhillon's signatures at the foot of each report you will observe the figures 6-345, which is the approximate date averred in the particulars of the charge as being the date of the alleged murders. As to evidence of date, one of the two prosecution witnesses has stated that these occurrences happened in 1945 and the other that they occurred in the third or fourth month of 1945. We know that Lt. Dhillon was at that time in the Popa area where these executions are alleged to have been carried out. It is stated by both witnesses that four men were executed and both crime reports mention four men by name. Moreover it is in evidence that Lieut. Dhillon told the men present in the nullah that these four men had gone over to the enemy and had been caught and therefore their punishment would be death and you may consider that such words are not inconsistent with the offences entered in the crime reports. The crime report purports to be in accordance with the procedure under the Indian National Army Act and it is for your consideration whether the circumstances show that it was in pursuance of some such authority that the proceedings in the nullah were carried out.

The learned Counsel for the Prosecution has suggested that the crime reports, together with Lt. Dhillon's words at the time of the shooting and the circumstances pointing to this transaction in the nullah having the character and appearance of a judicial execution establish identity of the four men alleged to have been shot. He has in addition asked you to accept as evidence of identity and proof of death the Special Order of the Day, Ex. WWW which states that these four men were duly executed. This is signed by Capt. Shah Nawaz, but with respect to the opinion of the Advocate-General I am bound to advise you that what Shah Nawaz says in reference to this execution in that order cannot be regarded by you as evidence of these matters inasmuch as Capt. Shah Nawaz has not been charged with these murders and whatever he may have stated about them on paper at some time or other at a time when he was not on both before this Court is not in evidence before you. In so far therefore, as reliance is placed on this Exhibit WWW to prove the death and identification of these four men, I can only direct you to put it out of your minds altogether in considering the murder charges against Lt. Dhillon and the charges of abetment of those murders against Capt. Sibal.

On the second point—proof of death—your decision on this point is to a certain extent governed by the view you take of the identification of the four men alleged to have been shot inasmuch as it is evident that if you are not satisfied that the Prosecution have proved that Hari Singh, Duli Chand, Darya Singh and Dharam

Singh were shot down there that day in the nullah, mere proof of four unidentified men would not go to establish the four murder charges against Dhillon. I cannot foretell how you will decide the issue of identification and express no opinion thereon but will merely point out that if you are not satisfied as to identity you have no need to consider these charges further. If, however, it comes to the conclusion that those particular four men were shot, then you must further decide whether they died, for without proof of death there can be no conviction for murder. You will remember that Nursing Sepoy Abdul Hafiz Khan told you that after the prisoners had been shot by Hidayatullah and Kalu Ram they fell down but were not dead because he saw them moving. Then Lt Dhillon ordered Sher Singh to put one or two more bullets into them and Sher Singh then went up to them and fired his revolver, putting one or two bullets into each one of them. Thereafter he did not see them moving. Then Capt Lee went up to the bodies, examined them and said something to Lt Dhillon. Afterwards Lt Dhillon ordered the bodies to be buried. Abdul Hafiz Khan did not see them being buried.

Here I must direct the attention of the Court to this witness's evidence that Capt Lee, the Medical Officer of the battalion, examined the bodies and told Lt Dhillon that the men were dead. As I said when the learned Advocate General tendered this evidence, one must not confound admissibility with weight and I must now advise you that the only probative value which may be placed on what Capt Lee said to Lt Dhillon is (a) to explain in part the reason why the witness Abdul Hafiz Khan came to the conclusion he did as to the death of the four men, and (b) as against Lt Dhillon to the extent in which by his words or his silence if the words called for a reply, he accepted Capt Lee's statement. I must warn you emphatically that Capt Lee's reported words, if you accept that they were uttered, are no sort of proof or value whatever in proving that these four men died on the occasion. Capt Lee has not come before you as a witness to declare on oath that these four men were dead and you cannot accept a mere hearsay report of what he is alleged to have said on that occasion as going to prove the truth of his assertion.

What other evidence is there that the four men died? I invite your attention to the evidence of Sepoy Gian Singh who was present with his company in the nullah at the shooting of four men. Was this the same occasion to which Abdul Hafiz Khan refers? You may consider that he gives substantially the same account of the identity of the executioners and the procedure followed, but he adds that when the men fell down after the first shots they were shrieking before Sher Singh fired his revolver at them. Then he saw them being buried in the trench. From the fact that the whole proceedings in the nullah that day purported to be an execution, that Lt Dhillon ordered the four men to be shot and that they were shot—two by Hidayatullah and two by Kalu Ram—and that they fell down and were then again shot by Sher Singh with a pistol, and finally that they were buried—from all these facts the prosecution asks you to accept that the four men died on that day.

Now to turn to the defence on these charges. First and foremost the accused in his statement says "It is true that I committed four men for trial on charges of desertion and attempting to communicate with the enemy. It is, however, quite untrue that these men were shot at my instance or under my orders. On the day and at the time they are said to have been shot, I was confined to bed and unable to move. In fact the sentences of death passed on these men were subsequently remitted by the Divisional Commander and were never executed." In parenthesis, that statement, like all three statements of the accused, was not made on oath inasmuch as Indian law does not permit an accused person to give evidence on oath, but in making statements you must remember that Lt Dhillon

(and the other officers) have exercised their rights to the fullest extent which the law allows and you are bound to give them all your weightiest consideration. As corroboration of Lt. Dhillon's statement, Counsel for the defence has drawn your attention to Exhibit VVV to which is appended a letter written by Lt. Dhillon on paper dated 6th March 1945 in which he states that he felt very weak "so weak as I have never felt before throughout my life and that he had to undergo a course of injections. Counsel has emphasised the entire improbability of Lt. Dhillon's state of health being such on that day as would have permitted him to be present at any such execution in fact as Counsel stated Dhillon was in a state of complete collapse of health. I shall read this letter to you so as to put its terms once again before you for your consideration in connection with what you must decide as to the state of health of Dhillon on that day (Exhibit VVV read)

Then Counsel argued that there is no identification of the persons alleged to have been shot with the persons mentioned in the crime report. You will remember how vital this point is in any charge of murder. It is contended that here there is nothing more than evidence that A was ordered to be shot and that someone saw a man shot and from those facts you are asked to come to the conclusion that A was shot, which would be a most monstrous proposition. Here neither of the two alleged eye witnesses were able to identify the men in the nullah nor the date the men were shot and hence there is no connection with those men and the crime report put in by Lt. Nag.

Furthermore Counsel points to the improbability of Nursing Sepoy Hafiz Khan having been there at all as he states he was. He had no business there, he was expected to be on duty and yet stayed away more out of curiosity and spent half an hour watching what he says was the execution of the four men, with whom he was in no way connected.

Finally, as evidence that Hafiz Khan's story is untrue, Counsel argued that the next witness Gian Singh said 'I do not remember any person not belonging to the company being there. You will remember that at the time there was some argument as to what Gian Singh had actually said but there it is now extracted from the record for your consideration. I might add that it was the first witness Nursing Sepoy Hafiz Khan who said 'I did not see any outsider apart from the officers the company and myself. At any rate Counsel argues that if Hafiz Khan had been there, as he states he was, for about half an hour he must inevitably have been seen by Singh who does not remember having seen any person not belonging to the company there—and Hafiz Khan did not belong to the company. To put it briefly the witness's story is false. The improbability of the story was stressed. How could a company have been fallen in in such a small and inconvenient space as described and how could Hafiz Khan have escaped detection in such a small space if he had been there? Would these men have been fallen in at a time when there were constant air raids?

Finally there is on record that when men were arrested and were sentenced to death they were later released and Counsel has quoted in that connection that Capt. Rab Nawaz and others were so released and in particular that in February 1945, Har Gangasaran was actually sentenced to death by Capt. Sahgal and was later released.

Lt. Dhillon's defence is therefore two-fold (1) that he did not cause these four men to be put to death and (2) that even if it be held that he did his act was justified under International Law in the sense that at the time he was an officer of the I.N.A. carrying out duties under the I.N.A. Act and that the carrying out of such duties during the prosecution of a war waged under rules of International Law provides immunity under this domestic law.

that he was remanding them and that in the ordinary course of military affairs it would be that officer who would dispose of the case against them. Absolutely no evidence, direct or circumstantial, exists as to any investigations before Capt. Sahgal, although he admits in his statement to having tried these men. But the Prosecution asks you to accept that the two I A F Dgoi duly signed and in form, endorsed with the words "sentenced to death"—P K Sahgal—in the accused's handwriting are together with the accused's statement evidence that he in fact sentenced sepoy Hari Singh, Duli Chand, Daryao Singh and Dharam Singh to death. In so doing they submit that he abetted Lt Dhillon to shoot those men, which was duly done, and that by his act Capt Sahgal instigated or incited Dhillon to commit illegal acts for which no justification exists in law, and which were duly carried out in consequence. In that connection the Advocate-General argued that the Provisional Government of Azad Hind was an illegal body, the formation of which was itself an offence against the State and that any body or tribunal constituted under it would be equally unlawful. That is the International Law aspect with which I have already dealt.

As to whether that sentence was carried out, I refer you to my review of the evidence in respect of the identity, proof of death and general circumstances in the charges of murder against Lt Dhillon, pointing out that if you are not satisfied that Lt Dhillon attended and caused the executions to take place and that death occurred or if you do not consider that the identity of the four men shot as Hari Singh, Duli Chand, Daryao Singh and Dharam Singh has been established by the prosecution, then there is no necessity to consider this case further in relation to abetment under the I P C, Section 109, although as I shall point out in a moment, there is still the question of abetment under another section remaining for your consideration.

As regards the defence I should point out that Capt Sahgal's connection with these charges purports to be through the Crime Reports, without which there would be no material evidence against him. If therefore you should reject the authenticity of these reports, there would be no *prima facie* case against him. I should also draw your attention to his statement that as an officer of the I N A he would be justified in sentencing such offenders to death under the terms of the I N A Act, and that such sentences could lawfully be passed in exercise of authority lawfully vested in him. At the same time, he has also stated "I was Offg Divisional Commander in the absence of Col Shah Nawaz Khan. In my capacity as Divisional Commander, I had to try on March 6, '45 four sepoy Hari Singh, Duli Chand, Daryao Singh and Dharam Singh who had been committed for trial by Lt G S Dhillon for offences of desertion and attempting to communicate with the enemy under Sections 35 and 29 (c) of the Indian National Army Act. They were found guilty and sentenced to death. The sentence was, however, not carried out, the convicts like many others who were similarly tried and sentenced about that time having been pardoned, on their expressing regret, and giving an assurance not to misbehave in future. The fact of the sentence having been passed was of course used for its propaganda value in order to deter others from deserting." You will also remember that in fact a witness named Gangasaran was sentenced to death about the same time and was reprieved by Capt Sahgal.

Finally, without reference at the present stage to Capt Sahgal's contention that he was performing a lawful act, do you consider that the crime reports, if you accept them, together with the accused's admission, constitute instigation or incitement to Lt Dhillon to murder these four particular men, regardless of whether the sentence was carried out and assuming, in fact, that it was never put into effect? I express no opinion on this which is purely a matter of fact for

your decision but I would point out that if you should come to such a conclusion then you might consider yourselves justified in bringing in a special finding or findings on the authority of I A A, Sec. 86 (4) read with the Code of Criminal Procedure, Secs. 237 and 238, of abetment under I P C Section 115—a section which contemplates the abetment, for example, of a murder which was not carried out in consequence

10th Charge

I will now invite your attention to a consideration of the 10th charge on the charge-sheet, in which Capt. Shah Nawaz Khan along has been arraigned. This charge is also laid under I A A, Section 41, in respect of the commission of a civil offence that is to say, abetment contrary to Section 109 of the I P C of an offence punishable under Section 302 of the I P C. In plain language that charge is one of the abetment of a murder which was committed in consequence, and the supporting particulars aver that at or near Popa Hill in Burma. On or about the 29th March 1945 Capt. Shah Nawaz Khan abetted the murder by one Khazin Shah and one Aya Singh of Gunner Mohd. Hussain of H.K.S.R.A. which offence was committed in consequence of such abetment.

The legal ingredients of the offences of murder and abetment, and the offence under the Indian Penal Code, Sec. 109, have been put before you in connection with the murder charges against the accused Lieut. Dhillon and the abetment of murder charges against the accused Capt. Sahgal and the same considerations apply here, so that it will be unnecessary for me to repeat them once again. I will merely remind you that before you would be justified in convicting the accused Capt. Shah Nawaz Khan on this charge as laid, the prosecution must have satisfied you beyond reasonable doubt that a man named Gunner Mohd. Husain of the Hong Kong-Singapore Royal Artillery—that specific individual and nobody else—was murdered by Khazin Shah and Aya Singh and that Capt. Shah Nawaz Khan on or about the date mentioned abetted that murder in one of the ways constituting abetment as defined in the I P C., Section 107.

On what then does the prosecution rely to prove that Khazin Shah and Aya Singh jointly murdered Gunner Mohd. Husain? Here it is necessary to call your attention to Sec. 34 of the I P C which reads as follows:

‘When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

That section embodies the commonsense principle that the law cannot differentiate between the acts of co-conspirators in the commission of a criminal act and make each as liable for the crime as if he had done it with his own hand. As a common illustration of that principle, there is the case of several men who combine to commit housebreaking, and in furtherance of that design one of the men actually breaks into the house whilst the others remain outside on the road to keep watch. In those circumstances the watchers would be guilty of housebreaking equally with the man who entered the house, although they had never entered it. Applying that to the case of Khazin Shah and Aya Singh, it is argued that both these men were present at the shooting of Mohd. Husain that they intended it, made arrangements for the firing party, caused the man to be tied up and to be blindfolded and gave the order to fire, and that therefore they are as guilty of murder as if they had themselves fired the rifles which are alleged to have killed Mohd. Husain.

The first evidence of this transaction occurs in the testimony of Havildar Ghulam Mohd. of the 1/13 FF Rifles who in March 1945 was performing

the duties of Regiment at Adjutant No. 2 Infantry Regiment. In that regiment were three Infantry Battalions, No 1 of which was commanded by Lieut Khazin Shah. He states that on the 26th or 27th March 1945 a man named Mohd Husain was placed in the quarter guard. He was present at the preliminary investigation of the case by Capt Sahgal on or about the 28th March, and again on the morning of the 29th March. On each occasion, No 1 Bn Commander, Khazin Shah, was present, and on each occasion Mohd Husain with two other men were charged with attempting to desert. Mohd Husain admitted his guilt. Ghulam Mohd saw all three men leave the office on the second occasion. At about 4 or 5 o'clock on the same evening he saw Mohd Husain passing in front of his room accompanied by the Adjutant of No 1 Bn and 2nd-Lt Aya Singh who was a liaison officer at Regimental Headquarters. From Sepoy Jagiri Ram you heard an account of the circumstances which led to the arrest of Mohd Husain and an almost stage by stage account, according to him, of the whole transaction from beginning to end. Briefly, he testified that without remembering dates which he does not understand, he was one day sitting in a nullah with Mohd Husain and a Garhwali discussing the possibilities of escape. They were sent for by the Bn Commander, Khazin Shah, who taxed them with what they had said, tied them to trees and beat them. From Mohd Husain he obtained an admission that he had been discussing the question of escape, jokingly, with Jagiri Ram and Allah Ditta. The latter, you will remember, had not been present when the matter was discussed in the nullah.

Khazin Shah took Mohd Husain and Jagiri Ram to what was described as Brigade Headquarters, but which you may decide was really Regimental Headquarters, since it appears Capt Sahgal was commanding there. By this time they had been joined by Allah Ditta who may have been arrested because of Mohd. Husain's admission to Khazin Shah. After interrogation by Capt. Sahgal, in the presence of Khazin Shah, they were all three who returned to the quarter guard where Aya Singh appeared and beat them, as is alleged, with the object of finding out the names of the men who intended to escape. On the following day, accompanied by Khazin Shah and one or two others, they were taken to the Divisional Commander, Shah Nawaz Khan. Here, according to Jagiri Ram, he, like Allah Ditta and Mohd Husain, were lined up before the accused Capt Shah Nawaz Khan who questioned each in turn. All except Mohd Husain denied having intended to escape. Mohd Husain, however, admitted the accusation and was told by Shah Nawaz. "You are not for our country, you are our enemy. I will give you death by shooting." It appears from the evidence of Allah Ditta that Khazin Shah was present at this interview.

On the same evening Jagiri Ram states that he was taken to Bn Headquarters, where he saw Mohd Husain, Khazin Shah and Aya Singh. He then gave an account of the shooting of Mohd Husain and described how Khazin Shah told him "You will shoot Mohd Husain because you are one of the men who were trying to escape with him," how he refused to do this and how Khazin Shah threatened him with a pistol, how a rifle was put to his shoulder by Aya Singh, who put his finger around the trigger and how, not knowing anything about firing a rifle, he was forced by Aya Singh to fire at Mohd Husain, who had been made to sit on the ground with his back to a tree and his hands tied behind his back. He states that Khazin Shah ordered Aya Singh to give the order to fire and that this was done accordingly.

Then you had the evidence of Allah Ditta who, although not present at the shooting, described how he had a conversation with Mohd Husain on the 26th March regarding escape. At sunset, on the same evening he was taken to Brigade

or Regimental Headquarters where he saw Mohd Husain, Jagiri Ram and Khazin Shah. He has the same story of being beaten by Khazin Shah, taxed with an intention of escaping and of being confined in the quarter guard. On 27th March he was interrogated by Aya Singh who beat him. Then you had in evidence that the witness heard Khazin Shah say that if those men were not punished he Khazin Shah would give up command of the battalion. Finally Allah Ditta gave an account of how he, Jagiri Ram and Mohd. Husain were brought in front of Shah Nawaz on 29th March, who finally told Mohd Husain in the presence of Khazin Shah 'You are sentenced to death by shooting because you intended to desert yourself and were persuading others to do the same. Therefore you are not pardoned. After this interview he, Allah Ditta was locked up in the same cell as Mohd Husain until 5 p.m. on the same day when Aya Singh and the Bn Adjutant took away Mohd Husain. He never saw him again.

Finally from L./Naik Sardar Mohammed you heard a detailed account of the shooting of Mohd Husain. This witness was Adjutant of the 1st Bn. 2nd Infantry Regt which was commanded by Khazin Shah. On the evening of 27th March he saw Khazin Shah beating Mohd Husain and the others and interrogating them. He was later informed by Khazin Shah that Mohd Husain had been sentenced to be shot, and he was also ordered by the same officer to make arrangements for the execution which included instructions as to detailing a fatigue party to dig a grave. He took Mohd Husain to the edge of a nullah where he was to be shot. He says Khazin Shah and Aya Singh were there and that the former gave instructions for Mohd Husain to be tied to a tree and that he should be blindfolded. Furthermore Khazin Shah detailed a firing party consisting of a Tamil, a Sikh and Jagiri Ram. He saw Aya Singh helping Jagiri Ram to fire the rifle. He heard Khazin Shah order Aya Singh to give the order to fire and stated that Aya Singh hesitated upon which he repeated the order. Aya Singh then said 'Kneeling Fire' and all three sepoys fired a round each at Mohd Husain who was killed. Sardar Mohd adds that Khazin Shah then ordered him to arrange for burial.

These are the facts on which the Prosecution rely to show Khazin Shah and Aya Singh murdered Mohd Husain. They ask you to accept that those persons were not acting in pursuance of an order by a court of justice but rather were engaged in a treasonable enterprise from which they cannot find justification for their action. They say that the intention of both men may not only be inferred from their overt acts such as arranging for an execution tying the man and blind folding him and ordering men to fire on him from a distance of a few yards away but also that the declared intention at least of Khazin Shah, was that this man should be put to death. In all these circumstances there was a common intention to cause death and that death was caused thereby and that the causing of death amounts to murder.

I have as yet left out of account, however those two vital considerations which require the strictest proof in all cases before the offence of murder can be said to be proved. The first of these is that the identity of the person said to be murdered must be established beyond reasonable doubt and that it is not sufficient merely to show that a man was murdered. On the contrary the law requires that if it is alleged that Sepoy Mohammed Husain H.K.S.R.A. was the victim the Prosecution must show that it was he and nobody else who died at the hands of the alleged murderers. On this point you may care to consider the evidence of Jagiri Ram who was, if you believe him a witness of the whole transaction almost from the beginning to the end. He states that he knew Mohammed Husain, although he admitted in cross-examination that he did not know him before the conversation in the nullah. He also stated that he had never spoken to

Mohammed Husain before he joined Company Headquarters. Yet, he went on to say that "I came to know Mohammed Husain in the company. He used to live with me at headquarters. He used to sit in my company" and again, "he used to live with me, surely I knew him." Is there a possibility of some confusion here with regard to the meaning in which the word "know" is used? Do you consider that the solution to the apparent contradiction is that whilst Jagiri Ram may not have known Mohammed Husain to talk to, he knew him by sight and name. If, at any rate, you accept his statement, there is the evidence of a man who was actually present at the shooting and who saw a man shot who, he states, was Mohd Husain. Then again you have the evidence of Allah Ditta who states that he knew Mohammed Husain who belonged to a British Regiment before, but you will remember of course that this man was not present at the shooting and cannot swear that the man he knew as Mohammed Husain was actually shot.

The fact remains that if a man named Mohammed Husain was shot, then in accordance with the existing practice which you may consider closely followed the procedure in the Indian Army, you would expect a casualty report to have been submitted. A casualty report was not submitted. That appears in the evidence of a prosecution witness, L/Naik Sardar Mohammed, who was present at the execution and whose duty it was in the ordinary course of business to submit such returns. He has stated that he did not do so, because "night had fallen and we had to march that night,"—a reason which the Defence Counsel has suggested to you is utterly inadequate.

It is for your consideration whether the reason why no casualty return was submitted was because no man of the name of Mohammed Husain was executed. Further, the defence contend that Jagiri Ram has throughout told a tutored, an untrue story and that since he did not know the name of the Garhwali with whom he said he was plotting to escape, it is unlikely that he would have known the name of the person he says was Mohammed Husain. He certainly did not know the names of the firing party.

The second vital point in proof of murder, to which I have already referred, is of course that it must be shown that the death of the particular person actually occurred. In order to establish this point you have usually the evidence of a medical officer who examined the body and found it dead. But whilst that method of proof is obviously the most satisfactory, it is by no means the only manner in which the fact of death may be inferred, and in cases in which no medical officer examined the body, it is necessary to consider whether circumstantial evidence exists which would justify a court coming to that conclusion beyond reasonable doubt. In this case you have heard the evidence of two eye-witnesses who were present at the shooting of a man alleged to have been Mohammed Husain. The first, Jagiri Ram, testified that all three of the firing party fired, and that in his case Aya Singh had put the rifle on his shoulder in the aiming position. His rifle was pointing at Mohd Husain, but having regard to his acknowledged ignorance of how to fire a rifle, are you satisfied that if his story is true his bullet must have struck Mohd Hussain? You will remember that it is contended by the defence that Jagiri Ram's story is utterly improbable. That there was no reason for him, a man quite untutored in the use of weapons to be made one of a firing party and least of all, even if his story is true, that there is any possibility that in his ignorance of how even to take an aim any shot fired by him could have taken effect on the target. The Prosecution, on the other hand, suggest that it was Khazim Shah's idea of "nemesi" that Jagiri Ram should be a member of the firing party. At any rate, Jagiri Ram says that Mohd Husain died and that he

saw the body lying there, although he did not go near it, nor see how many shots had penetrated it.

The other witness Sardar Mohd. stated that he was present at the shooting of Mohd. Husain which occurred at about dusk on 29th March 1945. Three men fired and "Mohd Husain was killed. His body rolled over sideways. He further stated that he went near the body and found it dead. He saw that the shirt covering the left breast was torn and from the amount of the tear he considered that there were three shots. He saw no blood. Nevertheless, it must be remembered that Sardar Mohd. was not a doctor and that his opinion that death had occurred was based merely on the fact that he considered three shots had struck and that the body was lying on its side. Then again, as bearing on proof of death, Sardar Mohd. has told you that Khazin Shah gave orders for burial, although no witness has stated that he saw the body buried. Allah Ditta has told you that after Aya Singh took Mohd. Husain away he never saw him again. It is on the evidence of these witnesses, coupled with the allegation that it was the clear intention of Khazin Shah to put the man to death there and then that the prosecution rely to establish that Sepoy Mohd. Husain died that evening by the intention of Khazin Shah and Aya Singh.

The defence, on the other hand point to the fact that there is no crime report in this case nor any document showing that the sentence was carried out. Furthermore, they say that Jagiri Ram's story is utterly improbable and a foolish invention, and that the story that a sentence was passed by the accused on Mohd Husain is untrue. Moreover Khazin Shah and Aya Singh have proved to be alive and have not been produced although they would have been the best evidence of whether a man was shot at all. The defence also draw your attention to the improbability of three shots having entered the body of one man in one and the same place and without blood being observed by a witness of the occurrence, and strongly contend that this evidence falls far short of proof of death.

I would also draw your attention to the accused's statement in which he says that it is 'in fact wrong that I sentenced him to death or that he was shot in execution of a sentence passed by me. Mohd Husain and his companions were only informally produced before me, there being no crime report drawn up. I only very strongly admonished Mohd Husain and told him that he had committed an offence for which he could and should be shot —and to that statement you should give due and weighty attention.

I will now leave these vital questions of identity and proof of death for your decision in closed court pointing out to you that they are both questions of fact on which you are bound to decide and on which if you have any reasonable doubt you must resolve in favour of the accused.

Now as to the alleged abetment of murder by Capt. Shah Nawaz Khan I have already explained to the Court that abetment consists of instigating a person to commit an offence or engaging in a conspiracy to commit it or intentionally aiding by any act or illegal omission a person to commit it. I would also remind you that the kind of abetment with which the accused is charged is that in which the actual crime was committed in consequence (I P C S 109).

The evidence on which the charge is based is again contained in the testimony of Jagiri Ram, Allah Ditta and Sardar Mohammed and it is this. Shortly after or within two days of the arrest of Mohd. Husain and the other two, all three were brought before the Commander of No. 2 Division, who was the accused Capt. Shah Nawaz. They were lined up before him according to Jagiri Ram, and Khazin Shah was present in the room. Shah Nawaz first addressed Jagiri

and told him to speak the truth and say whether he intended to escape. He did it. Then he asked Allah Ditta why he had not reported that Mohd Husain had talked to him about escaping, reminding him that he was an N.C.O. Allah Ditta replied that he knew nothing about Mohd Husain escaping. He thought it was a joke and begged pardon for his mistake. Lastly, Jagiri Ram said, if you believe him, that Capt Shah Nawaz addressed Mohd Husain and on some questioning Mohd Husain replied that he was in difficulties and that he had intended to escape and asked to be forgiven. To this the accused replied "You are not for our country; you are our enemy. I will give you death by shooting." Mohd Husain then asked for forgiveness and said he was prepared to go anywhere he was ordered, to which the accused did not reply. All three were then marched out accompanied by Major Negi and Khazin Shah and so far as Jagiri Ram is concerned, he seems to have been released after taking what he describes as an unwilling part in the shooting of Mohd Husain, the sum of the preliminary stages of this interview given by Allah Ditta is substantially the same, but his version of the conversation between Mohd Husain and the accused differs from that of Jagiri Ram. According to Allah Ditta, Shah Nawaz first asked Mohd Husain "Did you intend to desert or make others desert with you?" to which the latter replied, "No, I did not intend to desert." Then he admonished him to speak the truth, to which Mohammed Husain replied "I had a few difficulties and before I intended to escape." Up to that point you may consider there is not much difference between the two accounts, but Allah Ditta now quotes Shah Nawaz as having said: "You are sentenced to death by shooting because you intended to desert yourself and were persuading others to do the same. Therefore you are not pardoned." You will observe the difference between that wording and the words attributed by Jagiri Ram to the accused "You are not for our country; you are our enemy. I will give you death by shooting." There is a further difference between the evidence of Jagiri Ram and that of Allah Ditta, in that you will remember Allah Ditta volunteered that Capt Shah Nawaz then said: "Put the case to the Regimental Commander." It is for you to decide, gentlemen, whether if these words were used as stated, the accused was referring to all the cases or whether he was referring to the cases of Jagiri Ram and Allah Ditta only, or to any one of them, bearing in mind that Allah Ditta also says that before they were marched out he saw Shah Nawaz write something on the crime report before him. Does the fact that Allah Ditta was first brought before Major Negi and reduced to the ranks support the theory that the words "Put off the case to the Regimental Commander" were used with reference to Allah Ditta only? You will remember that the Prosecution allege that Mohammed Husain was shot the same evening and that no further action was taken against Jagiri Ram.

The accused in his statement before the Court has said in this connection "I was only strongly admonished Mohammed Husain and told him that he had committed an offence for which he could and should be shot. I, however, left the matter there and asked the case to be put up again before me or the Regimental Commander who had in the meantime been vested with the power to try such cases, if the men concerned attempted to misbehave a second time. The case never came up before me again."

Now, if you think that Shah Nawaz referred Mohd Husain's case back to the Regimental Commander without coming to any decision, then he cannot be found guilty of the charge of abetment of murder, and it is on exactly this point that Counsel for Defence argues that the witnesses bear out the accused's statement. Neither of the witnesses knew English and yet Allah Ditta is able to say

"I saw Col Shah Nawaz write something on the *Crime Report* ' Jagiri Ram admitted that he only knows the word 'report' in the sense of making a report to somebody, he did not know the word 'crime' and could not understand the words "Crime Report" when written on a piece of paper shown to him. How then could either of them say that they saw crime reports on the table in front of Shah Nawaz? It is contended in fact that there was no crime report, none has been produced and that this is a tutored story

Arising out of the 10th charge, the following questions, *inter alia*, present themselves for your decision

- (1) Do you believe that a man named Mohd Husain was brought before Capt Shah Nawaz on or about the date mentioned?
- (2) Did Capt. Shah Nawaz sentence that man to death or did he remand him without coming to a decision?
- (3) If you are satisfied that he sentenced him to death are you satisfied as to the identity of the man brought before Capt. Shah Nawaz being Gnr Mohd Husain H.K.S.R.A.?
- (4) Would Capt. Shah Nawaz's actions, as you accept them amount to an incitement or instigation (abetment) to Khazin Shah and Aya Singh to murder Mohd Husain?
- (5) Was Mohd Husain murdered by Khazin Shah and Aya Singh as averred in the charges in consequence of the abetment of Capt Shah Nawaz?
- (6) Are you satisfied that the Prosecution have provided strict proof of death?

In connection with the last point, I would remind you that if you are not satisfied as to proof of death you cannot convict the accused of an offence under I P C Sec. 109 which requires that the act abetted should have been committed in consequence of the abetment. Provided, however that you were satisfied—and I am not suggesting that you should be—that Shah Nawaz abetted Khazin Shah and Aya Singh to murder Gunner Mohd. Husain H K S R A and that you were convinced beyond reasonable doubt of the identity of that man you could then consider a special finding of guilty of a charge under I P C Sec. 115. You are empowered to return such a special finding under the provisions of I. A. A Sec 86 (4) read with Code of Criminal Procedure Sections 236 and 237

Before you close the Court to consider your verdict on the charges before you I would once again remind you that the onus of proof is upon the Prosecutor and that it is upon them to establish the various charges before the Court, beyond reasonable doubt. By reasonable doubt I do not mean every possible or fantastic doubt, since in criminal proceedings absolute or mathematical certainty is not required and is seldom obtainable but you must not convict the accused on any charge unless you have that degree of certainty which as prudent and careful men of the world you would require when acting in important affairs of your daily lives

Finally I would like to express my appreciation to Counsel for the Defence, and to Mr Bhulabhai Desai in particular for their assistance to me at all times, and for the extremely lucid manner in which the case for the defence has been put before the Court. To the Advocate-General and Lt.-Col Walsh also I would like to express my appreciation of the fair manner in which the case for the Prosecution has been conducted throughout.

Would you now, Sir, close the Court for consideration of your findings?

Evidence of Character of Accused Officers

When the Court met on December 31, the Judge-Advocate opened the day's proceedings by calling on Col Walsh military prosecutor, to give evidence as to the character and particulars of service of the accused.

Col Walsh put in records relating to the accused. About Capt. Shah Nawaz, the age was given as 31 years, 11 months. He had been in service for 9 years, 11 months and had served as a commissioned officer throughout having been Captain for five years and one month. Irrespective of this trial his general character was very good. He had no military decorations or award. There were no previous convictions.

Sahgal was 28 years, 11 months, served as commissioned officer continuously and as Captain for five years, had no military decorations or awards. His general character was very good, had no previous convictions.

Lt. Dhillon was 30 years, 9 months of age, with a total service of 5 years and 9 months having served as Lieutenant for four years and three months. He had no previous convictions, no decorations and his general character was very good.

The Judge-Advocate asked if the defence desired to cross-examine Col Walsh. Mr. Som who was present in the absence of Mr. Bhulabhai Desai, replied in the negative.

Later, the Judge-Advocate asked Defence Counsel and each of the accused if they wished to address the Court.

They replied "no."

The President then announced that the proceedings in open Court terminated and the Court would close to consider the sentence.

The Court then closed to consider the sentence. The General Court Martial found all the three accused officers guilty of the charge of waging war against the King Emperor. Lt. G. S. Dhillon was acquitted of the charge of murder and Capt. P. K. Sahgal was acquitted of the charge of abetment of murder. The Court found Capt. Shah Nawaz Khan guilty of the charge of abetment of murder.

Accordingly, the Court sentenced all the accused officers to transportation for life, cashiering and forfeiture of arrears of pay and allowance for waging war against the King Emperor. No separate sentence was passed upon Capt. Shah Nawaz Khan on the charge of abetment of murder.



Sir Claude Auchinleck, Commander-in-Chief of India

The sentence passed by the General Court Martial and the confirmation there of by the Commander-in-Chief who was the confirming authority in the case was announced in a communique which was published in the Gazette of India Extraordinary on the 31st day of January 1946.

The following is the full text of the communique :—

Capt. Shah Nawaz Khan, Capt. Sahgal and Lt. Dhillon have stood their trial by Court-Martial on charges against all three of waging war against the King-Emperor, Lt. Dhillon being also charged with murder and the other two with abetment of murder. The findings of the court are that all three are guilty of the charge of waging war, while Capt. Shah Nawaz Khan is also convicted of the charge of abetment of murder, Lt. Dhillon is acquitted of the charge of murder and Capt. Sahgal of the charge of abetment of murder.

Having found the accused guilty of the charge of waging war, the court was bound to sentence the accused either to death or to transportation for life: no lesser sentence was permissible under the law. The sentence of the court on all three accused is transportation for life, cashiering and forfeiture of arrears of pay and allowances.

No finding or sentence by court-martial is complete until confirmed. The confirming officer, in this case the Commander-in-Chief, is satisfied that the findings of the court are in each instance in conformity with the evidence and he has therefore confirmed them.

The confirming officer is, however, competent to mitigate, commute or remit the sentences. As already stated in the Press, it is the policy of the Government of India to bring to trial in future only such persons as are alleged, in addition, to waging war against the State, to have committed acts of gross brutality: and it has been announced that in reviewing sentences in any trials the competent authority will have regard to the extent to which the acts proved offend against the canons of civilized behaviour.

Lt. Dhillon and Capt. Sahgal have been acquitted of the charges of murder and abetment of murder, and it has not been alleged that they were guilty of other acts of brutality. Although Capt. Shah Nawaz Khan has been found guilty of abetment of murder and the acts proved against him were harsh, the prevailing circumstances have been taken into account by the confirming officer.

The Commander-in-Chief has decided, therefore, to treat all three accused in the same way in the matter of sentence, and to remit the sentences of transportation for life against all three accused. He has, however, confirmed the sentence of cashiering and forfeiture of arrears of pay and allowances, since it is in all circumstances a most serious crime for an officer or soldier to throw off his allegiance and wage war against the State. This is a principle which it is essential to uphold in the interests of the stability of any governments by law established,

Explanatory Note

When the General Court Martial assembled on November 5 1945, the cameramen were allowed to photograph the scene but the photographers were excluded from the court room as soon as the accused were brought in. The entry of the Press and the public to the court room was regulated by passes. Several amplifiers were fitted into the court room for the benefit of the visitors and the Press. On the opening day of the trial 13 000 words were telegraphed by the Press correspondents and the United Press of India to the various centres of India besides another ten thousand words being teletyped by the Associated Press of India. The Reuters, Associated Press of America, United Press of America, French News Agency and several British and American papers covered the trial.

The trial was held in a large room on the second floor of a building which had been in use as a dormitory since its construction in 1868. On entering this building on the morning of November 5 several of us were reminded of the 1933 when we lived in a corner of its ground floor as prisoners.

The three accused officers were informed of the remission of the sentence of transportation for life by the Commander-in-Chief on January 3 and they were released from the Red Fort the same evening at about 6 p.m.

There is a material omission from the official proceedings. While the evidence regarding the alleged use of force on the prisoners of war was being recorded, the court, on an objection by Mr Bhulabhai Desai gave a ruling that the names of persons who were to be tried subsequently were not to be mentioned. This ruling has not found place in the official record. This omission was pointed out by Lt Col Stott, a member of the court.

Mr Bhulabhai Desai addressed the court *ex tempore* for full two days, while the Prosecution Counsel, Sir Naushirwan Engineer, took about four hours to deliver his written address. The Judge-Advocate also took about the same time in summing up the case. While reading the address of Mr Bhulabhai Desai, the reader must bear in mind the difference between spoken English and written English.

Sir Tej Bahadur Sapru and Mr P. K. Sen attended the court for only the opening day while Pandit Jawaharlal Nehru attended the court for two days November 5 and 6. Kanwar Sir Dalip Singh attended the court on the opening day and also towards the end of the proceedings when Mr Bhulabhai Desai and Sir N.P. Engineer addressed the court and the Judge-Advocate summed up the case. Bakhshi Sir Tek Chand and Dr Kailash Nath Katju and Mr Asaf Ali were present throughout the trial.

The arrangements for the defence of the accused were made by the I.N.A. Defence Committee set up by the Indian National Congress. Mr Asaf Ali interviewed most of the witnesses in the Red Fort. Pandit Jawaharlal Nehru also met the three accused in the Red Fort before the commencement of the trial and Mr Raghunandan Saran, a member of the I.N.A. Defence Committee had been meeting the accused in connection with their defence. The decision of the Commander-in-Chief in remitting the entire sentences of the accused was welcomed by everyone connected with the defence as an act of statesmanship.

It may be mentioned here that the defence had also cited Dr. Miss Lakshmi Commander of the Rani of Jhansi Regiment as a defence witness but later gave her up. Privilege was claimed in respect of Field Marshal Wavell's Report on Malaya Campaign, which had also been requisitioned by the defence and the court upheld the objection to its production.

M. R.

Exhibit AA —INDIAN NATIONAL ARMY

Special Order No 1, dated 1st September 1942

by Capt Mohan Singh, G. O. C, Indian National Army.

Promotion.—The G O. C. is pleased to promote the following to the rank of 2/Licut. in the I N A W E. F. 1st September 1942.

Name	Old rank and Unit	
Shah Nawaz Khan	Capt	1/14 Punjab
P K Sahgal	Capt	2/10 Baluch
Gurbakhsh Singh Dhillon	Capt	1/14 Punjab
Babu Ram	Sub Maj	1/14 Punjab
D. C Nag	Lt	P W Cage

(Sd) M. Z. KIANI, Maj, 'G' H Q, I N A.

Exhibit BB.—INDIAN NATIONAL ARMY

Special Order No. 4, dated 9th September 1942

General Mohan Singh, General Officer Commanding, Indian National Army

Promotions —The G O C Indian National Army is pleased to make the following promotions in the I N A subject to the approval of the President, Council of Action, Indian Independence League —

To be Majors with effect from 10th September 1942 —

4 2/Lt Shah Nawaz Khan. 9 2/Lt P K Sahgal. 13. 2/Lt G. S. Dhillon
38 2/Lt D C Nag 41 2/Lt Babu Ram

(Sd) M Z KIANI, 2/Col, C G S, H. Q's., I N A

Exhibit CC —INDIAN NATIONAL ARMY.

Special Order No 12, dated 15th October 1942.

General Mohan Singh, G O C, Indian National Army

Promotions —The G. O C, I N A, is pleased to make the following promotions in the I N A., subject to the approval of President, Council of Action, Indian Independence League

Name and rank	Unit
To be Lt. Colonels with effect from 15th October 1942 —	
Major Shah Nawaz Khan.	H. Q., I. N. A.
To majors W E F, October 1942.	
Capt P. K. Sahgal	H. Q., I Hind Field Force Group.
Capt Gurbakhsh Singh Dhillon, Reinforcements.	

(Sd) M Z KIANI, Lt -Col., Chief of the General Staff, H Q, I N A.

Exhibit EE**TO THE OFFICERS AND MEN OF THE INDIAN NATIONAL ARMY**

From—Rash Behari Bose, President Council of Action, Indian Independence League, 13th February 1943

I have studied carefully the answers by officers of the I N A to the question-
naire put to them by me on the 10th February I note that practically all the
Officers are prepared to fight and sacrifice for the freedom of our Motherland but

I regret to say that not all of them are willing to remain in the I N A.

These Officers fall into the following categories —

- 1 Those afraid of taking action against the British,
- 2 Those who do not seem to have full faith in the Indian National Congress.
- 3 Those who believe in Dominion Status for India, which assumes a British Victory
- 4 Those who do not wish to remain in the I N A. under the 'present circumstances'

Such views if expressed by Prisoners of War may well be understood but coming as they do from Officers of the Indian National Army they naturally give rise to speculations as to the motives which promoted these Officers to join the Movement which was intended solely to fight for the complete Independence of India, and not for the attainment of Dominion Status. Whatever the status of a Dominion, it remains a Dominion of Britain and as such is a watch-dog of Britain.

As for those who wish to remain away from the I N A under the 'present circumstances', I can only say that I am hardly to blame for the present state of affairs in the Army. As you know India's fight against Britain has now reached a critical stage. Mahatma Gandhi has undertaken a three week fast to bring still more pressure on the British to quit India thus finally disproving any chance of a compromise. Our duty now is clear. Some of you may be anxious to know what will happen to those rejected from I N A. Unfortunately, I shall have no control over those who deliberately choose to quit the I N A. at the present juncture. I cannot speak for the Japanese, nor say in what manner or at what place they may be employed by the power whose prisoners they choose to be. Those of the Officers who do not wish to reconsider the views will have to appear before me at 11.30 hours to-day and give their reasons before I decide to separate them from the men. The appointments to the various Offices in the Indian National Army will be made by me as President of the Council of Action very soon. Needless to say no appointments have yet been made, but I can assure you that no Communal Sectarian or Provincial bias will be shown.

(Sd) Rash Behari Bose President Council of Action,
Indian Independence League

Exhibit FF—MILITARY BUREAU GAZETTE

Dated 17th April 1943

Absorptions Officers shown in the attached list No 2 are absorbed in the I N.A. subject to the approval of the President, Council of Action, I I L. with effect from 1st April 1943

Appointments—2 Appointments of Officers as per annexures (a), (b), (c), and (d) to this order are made in the I N.A. subject to the approval of the President Council of Action, I I L.

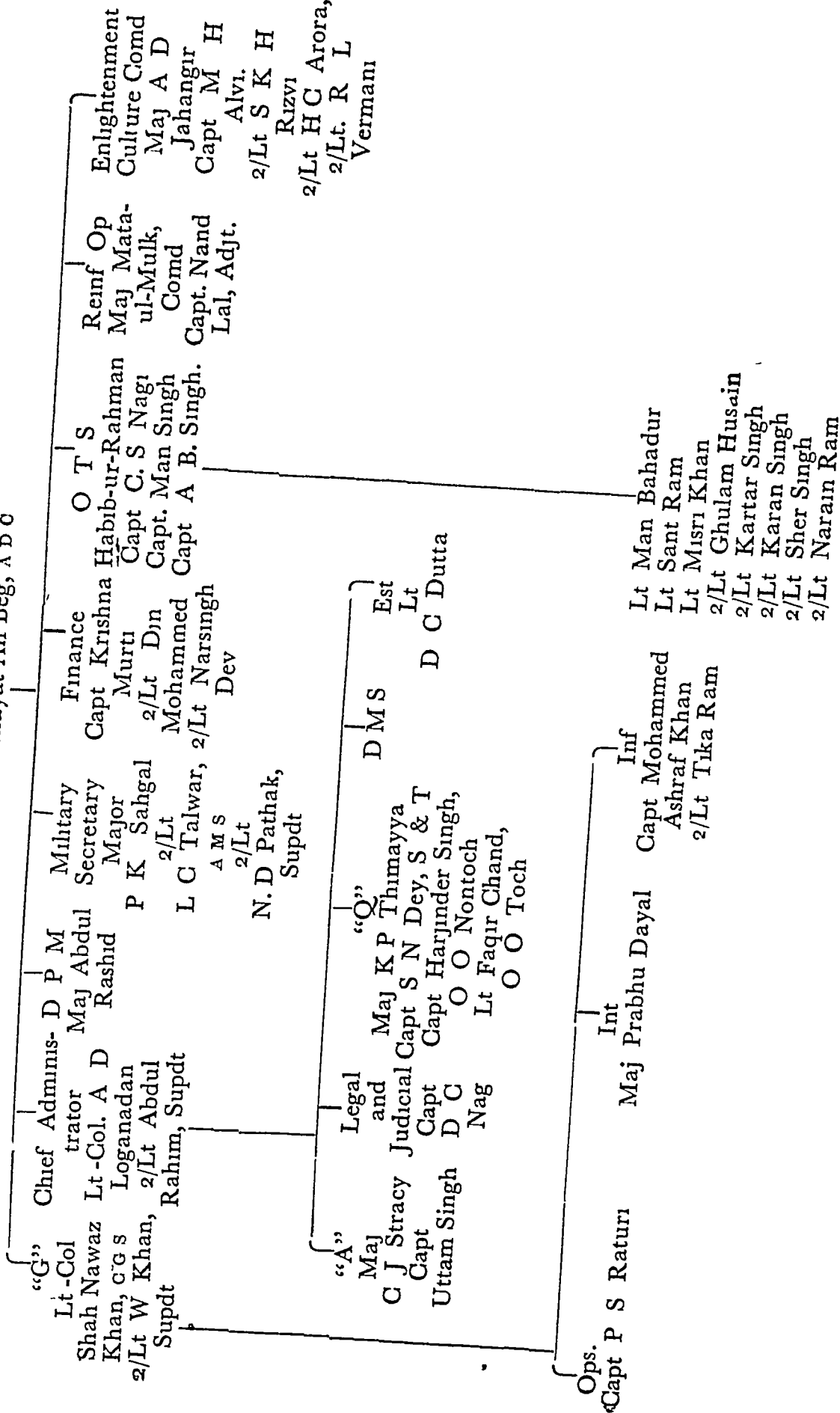
Serial No 11

Postings and transfers—The following postings and transfers are made,—

Rank	Name	From	To	W.E.f
		(Sd) P. K. SAHGAL,	Major,	Military Secretary

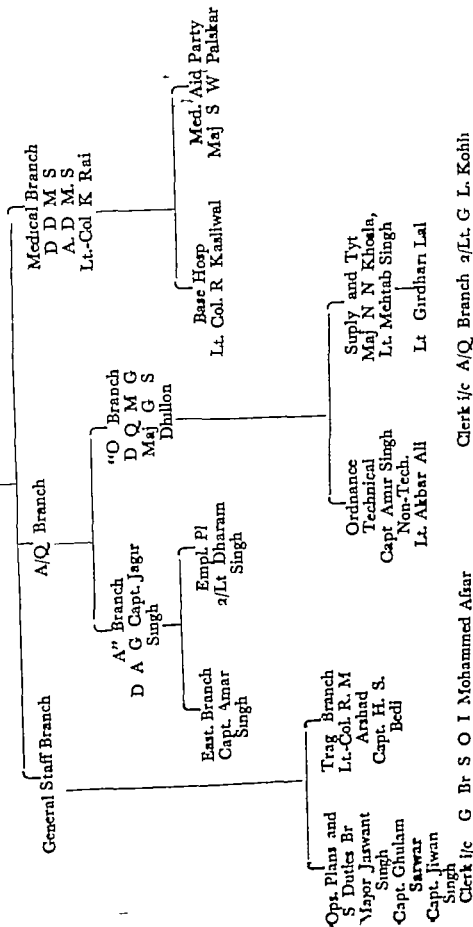
Annexure (a) To Military Bureau Gazette Serial No. 9 (2), dated 17th April 1942.
Lt-Col J K BHONSLA, D M B, I I L.

Lt Mirza Inayat Ali Beg, A D C



Annexure (b) To Military Bureau Gazette Serial, No. 9 (2), dated 17th April, 1943
 Lt.-Col M Z. KIANI, Army Commander

A. D. C.
 Lt. Abdul Majid, Personal Clerk
 H Qrs, I N A.



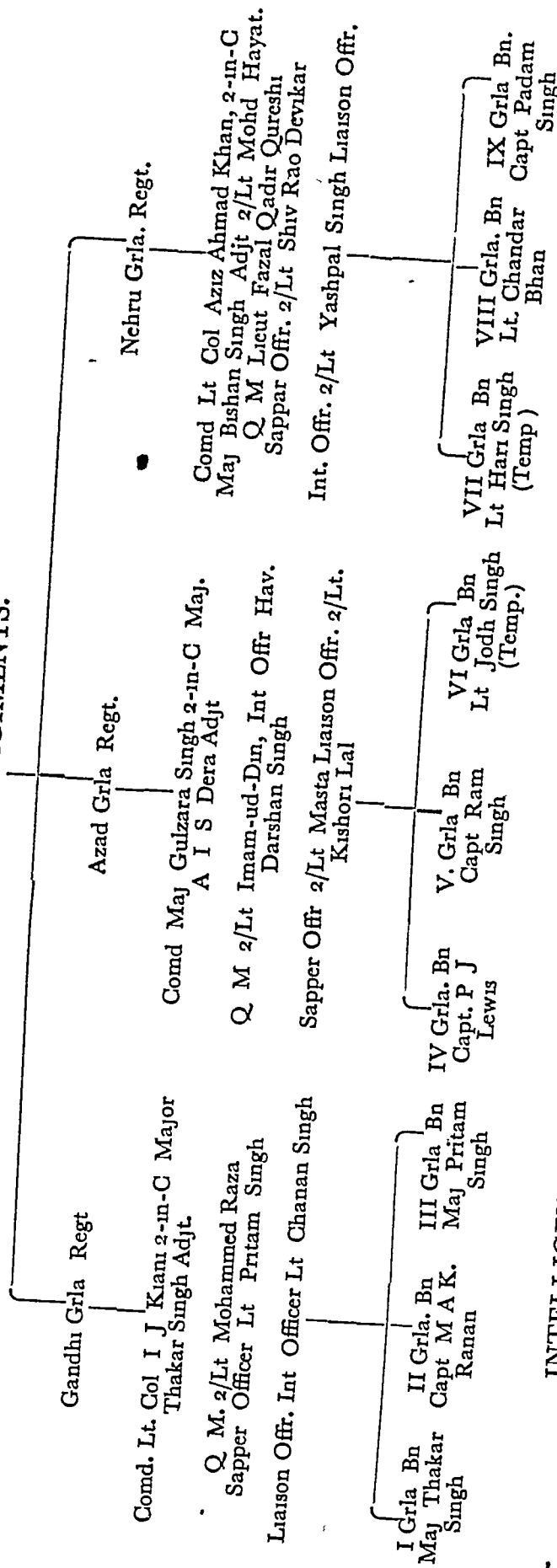
Clerk i/c G Br S O I Mohammed Afzar

Clerk i/c A/Q Branch 2/Lt. G L. Kohli

EXHIBIT FF

Annexure (c) To Military Bureau Gazette Serial No. 9 (2), dated 17th April 1943

GUERILLA REGIMENTS.



INTELLIGENCE GROUP

Comd Major S A Malik
 Staff Offr Lt Harnam Singh, Adjnt
 Q M 2/Lt Atma Singh
 Interpreter 2/Lt T S Wasan
 Hav C Basu
 2/Lt S K Bannertjee
 Sapper Offr 2/Lt Mohammed Afzal

Coy Comd Coy Comd Lt Haq
 Niwaz Khan

BAHADUR GROUP

Comdt Lt Col Burhan-ud-Din,
 Staff Offr
 Adjnt
 H M Lieut Gurbachan Singh Coy
 Comdt Capt M M Khurana

Annexure (d) Military Bureau Gazette Serial No 9 (2)

dated 17th April 1943

I HIND FIELD FORCE GROUP

Comd.—Lt.-Col. S. M. Hussain.

G 1 —Major J. W. Rodrigues.

G 2 —2/Lt. Khushal Singh.

Adjt.—Capt. B. S. Rawat.

Asstt. Adjt.—Lt. Allahyar Khan.

Q. M.—Capt. M. G. Chhubar.

Sapper Offr.—S. O. Ibrahim.

Liaison Officer

2/Lt. Khushal Ram.

Ord. Offr.

Inf Bn. Lt. Mir Rahman Khan (Temp) II Inf. Bn. 2/Lt. Dhanna Singh (Temp)
 III Inf Bn. Capt. B. S. Negi A. F. V. Bn. Major Mohammed Riaz Khan Hy
 Gun. Bn. Capt. Mumtaz Khan. Eng Coy Lt. N. R. Shindhu Tpt. Coy Lt. Dyanu
 Rao Jadhao Sig Coy 2/Lt. Sadhu Singh

Exhibit GG—MILITARY BUREAU GAZETTE.

Dated 10th April 1943

Serial No 7 The following postings and transfers are made:—

Rank.	Name.	From.	To	w. c. f.
Major	P. K. Sahgal	HQ. I Hind F.F. Gp	D.M. B. s. 26-2	1943 Office.
Lt.-Col.	Shah Nawaz Khan,	Reinf Gp	"	"
		(Sd.) P. K. SAHGAL,	Major	Military Secretary
		Budadari,	10th April	1943

Exhibit HH—INDIAN NATIONAL ARMY ORDERS by General Mohan
 Singh, General Officer Commanding Indian National Army

SYONAN TO MONDAY 30th November 1942 Military Secretary's Branch

PART B

Appointments—58 The G. O. C. I. N. A is pleased to make the following
 appointments in the Indian National Army:—

Lt.-Col. Shah Nawaz Khan

To be O. C. Cadets

Reinforcement GP

Trg. School w. c. f. 26th Nov., 1942

Postings and Transfers—59 The following postings and transfers are made:—

Rank	Name	From Unit.	To Unit	w e f
Lt-Col	Shah Nawaz Khan	Reinforcement	H Q, I N A	
			GP Cadets Trg School 26-11-1942	
	(Sd) N S BHAGAT,	Lt-Col ,	Military Secretary, I N A	

Exhibit JJ

Whipping —55. The Court may by its sentence order with or without rigorous imprisonment whipping according to the following scale, provided the accused is certified to be in a fit condition —

- (a) Six stripes a week or less (b) Total stripes not to exceed 24 (c) At an interval to be ordered by the Court

Exhibit KK DRAFT AMENDMENT TO I N A , ACT**CHAPTER—IV**

Summary Powers —In Section 9, after Item 4, insert the following —

- | | | |
|-------------------|----------------------------------|--|
| 5. Army Commander | Sepoys
N C Os | R I up to 160 days (6 months) Reduction to any rank with or without R I up to 60 days |
| | Officers up to the rank of Major | Reduction to next lower rank or severe reprimand or reprimand only if the accused Officer elects to be tried by him summarily rather than by a Court Martial |

Solitary confinement upto 15 days to officers excluding field officers, subject to the scale laid down in Section 54 of the Act In addition he may order forfeiture of pay of all ranks for a period not exceeding 30 days

Corporal Punishment

In serious cases of indiscipline amongst sepoy and N C Os , he may also order flogging not exceeding 3 strokes per week upto 3 weeks, subject to the provisions laid down in Section 55 of the Act

- | | | |
|-------------------------------|-----------------------------------|---|
| 6 Director of Military Bureau | Sepoys
N C Os | R I up to 9 months. Reduction to any lower rank with or without R I up to 90 days |
| | Officers including Field Officers | Reduction to next lower rank or severe reprimand or reprimand |

Solitary confinement up to one month to Officers including Field Officers subject to the scale laid down in Section 54 of the Act In addition he may order forfeiture of pay of all ranks for a period not exceeding 60 days.

Corporal Punishment

In serious cases of indiscipline amongst sepoy and N C Os he may also order flogging not exceeding 3 strokes per week up to 4 weeks, subject to the provisos laid down in Section 55 of the Act

7 Detachment Commanders.

- | | |
|---|---|
| (a) Officer Commanding | Powers of a Regiment or Group Commander as in Sub-section (4) of this Section |
| (b) Officer Commanding 200 or more but less than 500 strong | Powers of a Field Officer as in Sub-section (3) of this Section |
| (c) Officer Commanding 50 or | Powers of a Commanding Officer as in |

- more but less than 200 strong
 (d) Officer Commanding less than 50 strong
 (e) N C Os Commanding detachment.

Sub-Section (2) of this Section.
 Powers of an Officer as in Sub-Section (1) of this Section.
 Confinement to lines up to 7 days or in case of guards picquets or fatigue an extra up to 7
 When higher punishment is called for, he will send the accused to the nearest unit or detachment commanded by an Officer

When a Detachment Commander considers that a lower punishment than that he is empowered to award, is sufficient to meet the ends of justice he may use his discretion in awarding a lower punishment in any particular case, under Section 50 of the Act. Such punishments are —

- 1 Confinement to lines up to 28 days
- 2 Extra Guards, picquets or fatigue up to 7

Exhibit LL. SPECIAL ORDER OF THE DAY

Comrades of Azad Hind Fauj,

In the middle of March this year advanced units of the Azad Hind Fauj, fighting shoulder to shoulder with their valiant allies, the Imperial Nippon Forces, crossed the Indo-Burma border and the fight for India's liberation thereupon commenced of Indian soil.

The British authorities by ruthlessly exploiting India for over a century and bringing foreign soldiers to fight their battles for them had managed to put up a mighty force against us. After crossing the Indo-Burma border, inspired by the righteousness of our cause, encountered these numerically superior and better equipped, but heterogeneous and disunited forces of the enemy and defeated them in every battle. Our units with their better training and discipline and unshakable determination to do or die on the path of India's freedom soon established their superiority over the enemy whose morale deteriorated with each defeat. Fighting under the most trying conditions our officers and men displayed such courage and heroism that they have earned the praise of everybody. With their blood and sacrifice, these heroes have established traditions which the future soldiers of free India shall have to uphold. All preparations had been completed and the stage had been set for the final assault on Imphal when torrential rains overtook us, and to carry Imphal by an assault was rendered a tactical impossibility. Handicapped by the elements we were forced to postpone our offensive. After the postponement of offensive, it was found disadvantageous for our troops to continue to hold the line that we then had. For securing a more favourable defensive position, it was considered advisable to withdraw our troops. In accordance with this decision, our troops have withdrawn to a more favourable defensive position. We shall now utilise the period of lull in completing our preparations, so that with the advent of better weather we may be in a position to resume our offensive. Having beaten the enemy once in several sectors of the front our faith in our final victory and in the destruction of the Anglo-American forces of aggression has increased tenfold. As soon as all our preparations are complete we shall launch a mighty offensive against our enemies once again. With the superior fighting qualities, dauntless courage and unshakable devotion to duty of our officers and men victory shall surely be ours.

May the souls of those heroes who have fallen in this campaign inspire us

to still nobler deeds of heroism and bravery in the next phase of India's War of Liberation *Jai Hind*

(Sd) Subhas Chandra Bose, Supreme Commander, Azad Hind Fauj
Burma, 14th August 1944

Exhibit MM. AZAD HIND FAUJ ORDERS

Lt -Col Habib-ur-Rahman, Asstt Chief of Staff
No 13 Unit

Burma.

Dated 5 9 1944

Congratulatory 334 His Excellency Thakin Nu Burmese Minister of Foreign Affairs sent the following message of felicitations to H E Netaji, Subhas Chandra Bose, on the 7th July 1944 on the occasion of the celebration of Netaji week. Events of momentous significance have so crowded upon one another ever since Your Excellency have ably assumed leadership of the Indian Independence League on July 4, 1943, that it is hardly credible that a year has gone by. The transfer not long afterwards of your Provisional Government from Syonon to Burma, the front line country of the present War of Greater East Asia, was a happy augury, not only for India and Burma, but also for the whole of East Asia and Your Excellency has never been known to have paused for rest. This unabating energy has been a source of inspiration to all the rank and file of I N A as well as the Rani of Jhansi Regiment, whose fighting strength and spirit are growing from day to day. The spectacular success of the past year of Your Excellency's countrymen is attributable to Your Excellency's indomitable will to achieve freedom at all cost and implicit faith in East Asia's Ultimate Victory."

REPLY BY HIS EXCELLENCY NETAJI SUBHAS CHANDRA BOSE

Your Excellency,

Allow me to express on behalf of the Provisional Government of Azad Hind, the I N A, the Rani of Jhansi Regiment and myself, my most sincere thanks to Your Excellency for your kind message of felicitations of July 7. I am thankful to the Government and the People of Independent Burma for their good wishes in our fight for independence. I wish also to assure Your Excellency that the Provisional Government of Azad Hind and the three Million Indians in East Asia deeply appreciate the whole-hearted sympathy and co-operation of the Government and People of Burma, particularly since the Provisional Government shifted its H Q from Syonan to Burma. It is this aid of the Government and People of Burma that has rendered it possible for the I N A to reach the Indo-Burma frontier and carry on its successful operations against the Anglo-Americans in India. It is most gratifying to me to know that at this moment troops of the I N A are fighting shoulder to shoulder with their comrades of the Burmese Army against the common enemies, the Anglo-Americans, and for a common cause, namely, the freedom of Asia, the freedom of Burma, and the freedom of India. Assuring Your Excellency of my highest consideration

**Communique issued by the Provisional Government of Azad Hind
on July 27, 1944.**

On receipt of information *re* the formation of a new Cabinet with General Koise as Premier, Netaji Subhas Chandra Bose, Head of the State, Provisional Government of Azad Hind, cabled congratulations and felicitations to General Koise and other Ministers of his Cabinet, and assured them of the determination of Indians in East Asia to continue to fight shoulder to shoulder with Nippon until victory is

achieved His Excellency Netaji Subhas Chandra Bose, Head of the State, Provisional Government of Azad Hind and Supreme Commander of the Azad Hind Fauj, sent the following message of felicitations to His Excellency Nainggandaw Adipadi Dr Baw Maw, Head of State, Independent Burma, on the occasion of the Anniversary of Burmese Independence. On behalf of freedom loving Indians the Provisional Government of Free India, the I.N.A. and myself, I wish to offer my warmest congratulations to Your Excellency, to the Government and the people of Independent Burma on the occasion of the Anniversary of Burma's Independence. I wish to take this opportunity to express the heartiest thanks of the Provisional Government of Free India the Indian National Army and of myself to Your Excellency, to the Government and to the people of Independent Burma for all the valuable help that has been and is being rendered to us in our fight for the Independence of India. I wish also to assure Your Excellency that we, Indians, are irrevocably resolved to fight shoulder to shoulder with Independent Burma and Nippon under all circumstances until our common enemies are crushed and our common Victory is achieved.

Netaji's message to Nipponese Foreign Minister

Netaji Subhas Chandra Bose has sent the following message to His Excellency Mamaru Shingamitsu Foreign Minister of Nippon —

On the occasion of Your Excellency's assuming once again the office of Foreign Minister and concurrently the Minister of Greater East Asiatic Affairs I desire to offer my heartiest felicitation. Having had the highest admiration of Your Excellency's statesmanship and diplomacy it gives me a unique pleasure to see Your Excellency back in office. I take this opportunity of assuring Your Excellency once again that in spite of the hard times that lie ahead of us we shall go on fighting shoulder to shoulder with Nippon under all circumstances until our common Victory is achieved.

His Excellency Mamaru Shingamitsu sent the following reply to Netaji Subhas Chandra Bose

I wish to express my sincere thanks to Your Excellency for your kind message of felicitations. I welcome your assurance of whole-hearted co-operation at this momentous juncture. I am firmly convinced that we shall win our common cause and that under Your Excellency's wise and able leadership the struggle for liberating India will ultimately be crowned with success. All my best wishes.

The following telegrams were recently exchanged between His Excellency Netaji Subhas Chandra Bose Head of the State Provisional Government of Azad Hind and His Excellency Kavit Abhaiwongse Prime Minister of Thailand.

Netaji's telegram — On behalf of all freedom-loving Indians the Provisional Government of Azad Hind the Indian National Army the Indian Independence League and myself I wish to offer my hearty congratulations on the occasion of Your Excellency assuming the Office of Prime Minister. I wish to take this opportunity to assure Your Excellency that we, Indians, will continue wholeheartedly to co-operate with the Government and the people of Thailand in our common fight against the common enemy. I hope and trust that during Your Excellency's tenure of office, the culture and political ties that have already been formed between Thailand and Free India will be further strengthened. Heartily wishing Your Excellency all success as the leader of the Thai Nation and assuring Your Excellency of my highest consideration—Subhas Chandra Bose, Head of the State, Provisional Government of Azad Hind.

His Excellency Major Abhaiwongse's reply — I thank you sincerely for your congratulatory telegram. The Government and people of Thailand fully sympathise with the high aspirations of the freedom loving Indians and will continue to

give whole-hearted support to the Indian Independence Movement. I desire to assure Your Excellency that I shall use my constant effort further to enhance the cultural and political ties between Thailand and Free India. In the name of the Thai people, I wish every success for the I N A. and for Your Excellency's noble undertaking. May the Independence of India soon be achieved. I avail myself of this opportunity of assuring Your Excellency of my highest consideration.

Decorations A H F. Personnel —335 The following will be the order of precedence for Decoration awarded to members of the Azad Hind Fauj by the Provisional Government of Azad Hind :

1. Shaheed-e-Bharat. 2. Sher-e-Hind. 3. Sardar-e-Jang. 4. Vire-o-Hind.
5. Tamgha-e-Bahaduri. 6. Tamgha-e-Shatrurnash.

II. In future there will be two classes of the 'Sardar-e-Jang' Medal according to the standard of individual bravery, devotion to duty and leadership exhibited in the field. The awards of 'Sardar-e-Jang' Medal made up till now will be of Class I of that medal

III. Members of the Azad Hind, who render meritorious and commendable service in the field, but fall short of qualifying for a decoration, will be granted the certificate 'Sanad-e-Bahaduri' by the Head of the State, Provisional Government of Azad Hind

The award of Tamgha-e-Shatrurnash is of the following classes :

Class II : to be awarded to those members of the Azad Hind Fauj who kill or capture alive any British or American Officer or other rank either in single combat or in a group fight where qualities of individual initiative and individual bravery come into play. Class I : to be awarded to those members of the Azad Hind Fauj who exhibit conspicuous gallantry and devotion to duty in killing or capturing alive any British or American Officer or other rank either in single combat or in a group fighting where qualities of individual bravery come into play

Precedence, etc —The medal 'Tamgha-e-Nash' shall take precedence after 'Tamgha-e-Bahaduri'. This medal may be awarded to a member of the Azad Hind Fauj in addition to any other decoration for which he may have qualified. 'Tamgha-e-Shatrurnash' may also be awarded posthumously

The Provisional Government of Azad Hind has decided that the medal 'Tamgha-e-Shatrurnash' may be awarded to any person other than a member of Azad Hind Fauj, whether outside India or inside, who, while participating in or helping the war of India's Liberation, qualifies himself for the decoration by fulfilling the conditions laid down above

This medal may also be awarded to any person outside India or inside—who helps the prosecution of India's War of Liberation by killing or capturing alive any British or American, other than Army Personnel, who is clearly an enemy in the path of India's freedom

Exhibit NN—AZAD HIND FAUJI ORDERS

By Lieut.-Colonel Aziz Ahmad Khan.

Burma

No. 11 Unit.

Dated 30th October 1944.

Appointments-Officers

444 During the absence of the Supreme Commander, A. H. F., from H. Q. No. 11 Unit, Lieut.-Col. Aziz Ahmad Khan will deal with all routine and urgent matters, which would ordinarily have been dealt with by the Supreme Commander. Lt.-Col. Aziz Ahmad Khan will, during this period, exercise the powers of the Chief of Staff.

War Council—445 Since the establishment of the Provisional Government of Azad Hind on 21st October 1943, a year of intensive activity has elapsed. In the meantime, the war has reached a stage when the initiative is going to pass from the hands of our enemies to those of our friends and of our Allies. To prepare for the coming offensive, it is absolutely necessary to make an all-out effort at Total Mobilisation and to further intensify and co-ordinate all our activities connected with our war preparations. In order to achieve this objective, a special organ of the Provisional Government of Azad Hind has to be set up. The War Council of the Provisional Government has therefore been formed. The War Council which is the Supreme organ of the Provisional Government for directing and controlling the war effort and the war preparations of the Government will have the following duties:

- 1 To further intensify the war activities of the Provisional Government.
- 2 To initiate any new activities that will be found necessary for the war effort and for war preparations.
- 3 To co-ordinate all these activities with a view to producing the maximum result, namely, to launch the offensive that will bring about the speedy and complete overthrow of our enemies.

The following is the composition of the War Council

- 1 Colonel J K Bhonsla. 2 Colonel M. Z. Kiani. 3 Lt. Col. Ehsan Qadir. 4 Lt.-Col. Aziz Ahmad Khan. 5 Lt.-Col. Habib-ur-Rahman. 6 Lt. Col. Gulzara Singh. 7 Sri N. Raghavan. 8 S. A. Ayer. 9. Sri Parmanand. 10 Col. A. C. Chatterji. Secretary. 11 Sri A. Yellapa co-opted member.

(Sd.) D C Nag Major A

Exhibit OO—SPECIAL ORDER OF THE DAY

Secretary

To

All Officers and men of the Azad Hind Army

Comrades

As you all know the positive achievements of the Officers and men of the Azad Hind Fauj last year on the field of battle and the victories that they scored over the enemy through their patriotism, bravery and self-sacrifice were marred to some extent by the cowardice and treachery of a few officers and men. We were hoping that with the advent of the New Year all traces of cowardice and treachery would be wiped out, and that in this year's operations the Azad Hind Fauj would be able to put up an unsullied record of heroism and self-sacrifice. But that was not to be. The recent treachery of five officers of the H Q. of the 2nd Division has come as an eye-opener to us that all is not well within our ranks and that the seeds of cowardice and treachery have yet to be wiped out. If we now succeed in exterminating cowardice and treachery once for all this shameful and despicable incident may through God's grace, ultimately prove to be a blessing in disguise. I am therefore determined to take all possible measures necessary for the purification of our Army. I am confident that in this I shall have your full and unstinted support. In order to destroy completely the germs of cowardice and treachery the following measures will have to be adopted—

- 1 Every member of the Azad Hind Fauj Officer N C O or Sepoy will in future be entitled to arrest any other member of the Azad Hind Fauj no matter what his rank may be if he behaves in a cowardly manner or to shoot him if he acts in a treacherous manner.

- 2 I am giving an opportunity to all members of the Azad Hind Fauj who may not feel inclined to work dutifully or fight courageously in future to leave the

ranks of the Azad Hind Fauj This offer will be open for one week from the time of its communication

3 In addition to giving an opportunity to unwilling elements to leave voluntarily the ranks of the Azad Hind Fauj, I want to carry out thorough purge of our Army. During the course of this purge, all those will be removed against whom there is suspicion that they may fail us, or betray us, at the critical moment In order to carry out this purge successfully I want your fullest co-operation and I want you, therefore, to give me and my trusted officers all available information about any cowardly or treacherous elements that may still exist in our Army.

4. It will not be enough to carry out a thorough purge now In future, also, vigilance will have to continue It will, therefore, be the duty of every member of the Azad Hind Fauj, in future, to keep his eyes and ears open in order to detect in good time any tendency towards cowardice or treachery. In future, if any member of the Azad Hind Fauj detects any tendency towards cowardice or treachery, he should report at once, either orally or in writing, either to me or to the officers who may be within reach. In other words, from now onwards and for all times, every member of the Azad Hind Fauj should regard himself as the custodian of the honour and reputation of the Azad Hind Fauj and of the Indian Nation

5 After the purge has been carried out and unwilling elements have been given an opportunity of leaving our Army, if there is any case of cowardice or treachery, the punishment will be death

6 In order to create within our Army a moral bulwark against cowardice and treachery, we have to create an intense hatred against cowardice and treachery in any form A strong feeling has to be created in the mind of every member of this Army that for a member of a revolutionary army, there is no crime more heinous and despicable than to be a coward or a traitor Instructions are being issued separately as to how we can create such an intense hatred against cowardice and treachery so that there will be no more cowards or traitors within our ranks

7. After the purge has been carried out, every member of the Azad Hind Fauj will be required to renew his oath to fight on bravely and courageously until the emancipation of our dear motherland is achieved Instructions regarding the form and manner of this oath will be issued separately

8 Special rewards will be given to those who give information regarding cowardly and treacherous elements or who arrest or shoot at the front cowardly and treacherous elements

(Sd) Subhas Chandra Bose, Supreme Commander, Azad Hind Fauj
Burma, Dated 13th March 1945.

Exhibit PP

Security.

Special Order of the day.

To

ALL OFFICERS AND MEN OF THE AZAD HIND FAUJ

Comrades,

In order to express our indignation, disgust and hatred, against cowardice and treachery, a special observance will be held in every camp of the Azad Hind Fauj on a day to be previously fixed for the purpose All officers and other ranks must take part in the observance With regard to the details of the observance, each camp will be free to draw up its own programme with a view to making the observance a complete success Directions in broad outlines are, however, being given herewith :

(a) Poems or articles may be written and read, expressing hatred and

disgust against cowardice and treachery

- (b) Dramas may be improvised and acted for expressing abhorrence against cowardice and treachery
- (c) Effigies of the traitor (Riaz, Madan, Sarwary, Doy, Mohammed Bakhsh and others) in cardboard or straw or clay or any other suitable material, either in human or in animal form, should be prepared and every member of the camp should give full vent to his disgust and hatred against the traitors
- (d) Lectures should be delivered praising Indian heroes of the past and lauding the brave deeds of the members of the Azad Hind Fauj in the course of the present War of Liberation.
- (e) The day's observance should end with the singing of the National Anthem and collective shouting of slogans.

Special reward will be given to the camp that can put up the best show

(Sd.) Subhas Chandra Bose, Supreme Commander Azad Hind Fauj

Burma 13-3-1945.

Exhibit QQ

No 107/112/G

Office of the D M B I I L

Syonan, 22nd March 1943

To

H Qrs, I N A., Bidadari

Sub - Policy regarding re-organization of the I.N.A

Herewith 2 copies of " Policy regarding Re-organization of the I.N.A " for necessary action, please.

(Sd.) Shah Nawaz Khan, Lt.-Col. C. G. S., Office of the D M B I I L.

Copy to -

Iwakura Kikan (3)

Policy regarding Re-organization of the I.N.A.

1 All the formations in the I.N.A. will first re-organize within themselves. Units and sub-units will be completed in strength by a process of amalgamation. Any deficiencies will be made up from the reinforcement camp. These will be demanded as far as possible, as complete units and sub-units. Say, for instance, after re-organization Gandhi Regt. 4th Bn. is deficient of three platoons of Sikhs and one Section of Jats, Comd. Gandhi Regt. will place his demand on the Army Commander, who will forward it to the D M B, who in turn, will place them on the O C reinforcements. System of going direct and selecting men from the reinforcement camp is strictly forbidden.

2 Reinforcement camp is being formed as soon as circumstances permit. All the volunteers for the I.N.A. from prisoners of war camps in Syonan, and from the mainland will be concentrated there and organized on the same basis as the corresponding units of I N A.

3 Comd reinforcement is entirely responsible for the organization training discipline and administration of all such men under his command. He will maintain a complete record of each individual coming to his camp showing the date of joining, original unit place from where he came and how finally disposed of.

4. It is notified for the information of all concerned that owing to a very small number of P. M. and Sikh volunteers coming forward to join the I N A, Jat and Gujjar Companies may have to be accepted in their place

5. Army Commander is requested to forward to these H. Qrs. deficiencies by Regiments, as envisaged by this letter as soon as possible, please.

6 This letter will take effect immediately as no more volunteers are expected to rejoin their units from Separation Camps

(Sd.) Shah Nawaz Khan, Lt-Col. C. G. S., Office of the D M.B, I I L.

Syonan, 22-3-1943

Exhibit RR

No 107/1/6/G'

Office of the D. M. B, I I. L, Syonan, 30th March 1943

Most Secret.

To

Headquarters, I N. A, Bidadari, Designations—Units and Formations.

For the purpose of secrecy, in future, the Special Service Group will be referred to as 'Bahadur Group'. This is not to be published in any of the unit or formation routine orders, it must be passed down in such a manner that every single soldier will understand the significance of this change.

(Sd.) Shah Nawaz Khan, Lt.-Col. C.G.S., Office of the D. M. B., I. I. L.

Copy to :—Iwakuru Kikan (3)

Exhibit SS

No. 104/5/1/G Office of the D.M.B., I.I.L., Syonan; dated 27th May 2603.

To

H. Qrs., Indian National Army.

Sub :—Policy Regarding the Disposal of Category 'B' & 'A' Personnel

It has been brought to notice that certain units are indiscriminately sending all their category 'B' and 'C' men to the reinforcement group. In some cases men have been sent only to convalesce there. The Reinforcement Gp., as it is today, is not in such a fortunate position as to provide any facilities to category 'B' and 'C' men, owing to many difficulties in connection with cooking utensils, accommodation, etc.

Besides this, the I N A is approximately 2000 men under-strength, and up to date it has been found very difficult to fill up this large gap. All unit and formation Comds are, therefore, requested to give their best co-operation and support in overcoming this difficulty by

(a) thoroughly ascertaining each case sent to the Reinforcement Gp
As far as possible only permanent category 'C' men should be sent,

(b) making every possible endeavour to bring up temporary category 'B' and 'C' men to a higher class of fitness, by giving such persons special care, rest and feeding Unit Welfare funds should freely be used for this purpose, and any money spent thus, is certainly well spent

There is also a likelihood that all category 'B' and 'C' men who cannot be absorbed in the I N. A. will be reverted to Ps of War and sent to those

camps. It is fully realised that it is a very hard and regrettable decision, never the less it may have to be resorted to. The D.M.B feels confident that the unit and formation Comds will realize that under these circumstances, our moral obligation to our men is to send as few as possible to the Reinforcements for reversion to P.s. of War

(Sd.) Shah Nawaz Khan, Lt-Col, C.G.S, Office of the D.M.B, I.I.L.

Copy to —Comd, Re-inforcement Group.

Exhibit TT

No S/10/1/G H. Qrs., Supreme Command, I.N.A

Most Secret

Syonan-To, dated 8th August '49

To

H. Qrs., No 1 Div., I.N.A. Comd. Reinforcement Group H Qrs., Hikari Nkan

Herewith sent one copy of the Scheme for the Reception and Management of the Indian Soldiers in Burma.'

(Sd) Shah Nawaz Khan Lt.-Col, C.G.S, H Qrs., Supreme Command, I.N.A

Most Secret:

Scheme for the reception and management of the Indian soldiers in Burma.

General It is expected that when the operations start on the Indo-Burma border, some Indian soldiers will walk over to our side. Some on the other hand will be forced to surrender during the fight. Due to the difficulties of language, it is very difficult for the Japanese troops in the forward areas to discriminate handle these men properly. To get best results of our propaganda, we should be very careful in the treatment of these men. Even a small slip costs a lot.

Object The object of this scheme is to set up a satisfactory system for their

- 1 Reception
- 2 Feeding, Equipment and Accommodation
- 3 Mental training and
- 4 Organization.

Reception 1 Forward Areas It is presumed that during operations, the special service group and the Intelligence Group will be working in close liaison with Japanese troops in the forward areas. It will be a part of their duty to direct these men to the forward Collecting Post.

The role of the Reinforcement Group

2 Forward Collecting Post will be manned by a party of the Reinforcement Group. It will be somewhere near the Japanese Regimental H Qrs. It will be capable of

- 1 Feeding all the Indian Soldiers reaching there.
- 2 Providing the necessary medical aid and evacuating the severely injured cases to the Advance or Main Collecting Post.
- 3 Giving encouragement and creating good impression on the newly arrived soldiers

Suggested Organization

Comdr	1	1 Captain or Lieut	Administrative	5 Havildar
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Assistants	2 2-Lts.	Staff	Sepoys 4
Provost	4 Havildar 1	Medical Officer	1 Lt.
	Sepoys 3	Nursing Orderlies	3

They will have the necessary medical equipment and the cooking utensils, etc., sufficient to feed at least 100 men at a time.

Advance Collecting Post This will be located somewhere near the Div. H Qrs
Duties

- 1 Feeding of these men
- 2 Further medical aid to wounded and urgent operations
- 3 Immediate transfer of severe cases to the Main Collecting Post.
- 4 Arranging the despatch of all men to the main Collecting Station.

Organization

Comdr	1 Major or Capt	Administrative Staff	15 Havildars 2
Assistants	3 Capts.		Sepoys 13
Provost	20 2-Lts. 1	Medical Officer	2 Capts. or
	Havildar 2		Lts
	Sepoys 17.	Nursing Orderlies	10

Main Collecting Post This will be near Supreme H Q., I N. A

Duties

- 1 Accommodation of these people.
- 2 Clothing
2. Mental training with a view to infuse national spirit.
- 4 Categorising these men, i.e.,

Category 'A' Those who had knowledge of the movement and have come with an intention to join us

Category 'B' Those who had no knowledge but are willing to join now

Category 'C' Those who do not agree to join the National Army

On receipt of such information from the O C, Reinforcement the Supreme H Qrs will arrange

- 1 to organize arm and equip the men belonging to Categories A and B, and
- 2 to hand over those in Category 'C' to the Japanese authorities to be treated as Ps of War

Organization, 1 H Qrs Reinforcement Group (Comdr Reinforcement Group to command the Main Collecting Post)

- 2 Medical (it will be advisable to have this post near Base Hospital)

Medical Officers 3 Nursing Orderlies 15

- 3 Four Officers from Enlightenment and Culture Department to be attached for mental and spiritual training

- 4 One copy M P (if this is not possible the O C, Reinforcement will use his own men for Police duty. If necessary, he can ask for duty platoon or Coy. from other units in the vicinity)

A diagram showing the working of the scheme is attached herewith. The number of posts will depend on the length of the front line and the line of communication. Before the scheme can be put into effective operation the Hikari Kikan will kindly ensure that

- 1 All the Japanese Officers and men are familiar with the policy of the Nippon Government towards India, I N A and the Indian Soldiers coming to our side.

campa. It is fully realized that it is a very hard and regrettable decision, never the less it may have to be resorted to. The D.M.B. feels confident that the unit and formation Comds. will realize that under these circumstances, our moral obligation to our men is to send as few as possible to the Reinforcements for reversion to Pn. of War.

(Sd) Shah Nawaz Khan, Lt-Col, C.G.S., Office of the D.M.B., I.I.L.

Copy to — Comd, Re-inforcement Group.

Exhibit TT

No S/10/1/G H. Qrs., Supreme Command, I.N.A.

Most Secret

Syonan-To, dated 8th August '49

To

H Qrs., No 1 Div., I.N.A. Comd. Reinforcement Group H. Qrs., Hikari Kikan

Herewith sent one copy of the 'Scheme for the Reception and Management of the Indian Soldiers in Burma.

(Sd) Shah Nawaz Khan, Lt-Col, C.G.S., H Qrs., Supreme Command, I.N.A.

Most Secret:

Scheme for the reception and management of the Indian soldiers in Burma

General It is expected that when the operations start on the Indo-Burma border, some Indian soldiers will walk over to our side. Some on the other hand will be forced to surrender during the fight. Due to the difficulties of language, etc., it is very difficult for the Japanese troops in the forward areas to discriminate and handle these men properly. To get best results of our propaganda, we should be very careful in the treatment of these men. Even a small slip costs a lot.

Object The object of this scheme is to set up a satisfactory system for their

- 1 Reception.
- 2 Feeding, Equipment and Accommodation
- 3 Mental training and
- 4 Organization.

Reception 1 Forward Areas. It is presumed that during operations, the special service group and the Intelligence Group will be working in close liaison with Japanese troops in the forward areas. It will be a part of their duty to direct these men to the forward Collecting Post.

The role of the Reinforcement Group.

2 Forward Collecting Post will be manned by a party of the Reinforcement Group. It will be somewhere near the Japanese Regimental H Qrs. It will be capable of

- 1 Feeding all the Indian Soldiers reaching there.
- 2 Providing the necessary medical aid and evacuating the severely injured cases to the Advance or Main Collecting Post.
- 3 Giving encouragement and creating good impression on the newly arrived soldiers

Suggested Organization

Comdr 1 1 Captain or Lieut.

Administrative

3 Havildar 1

Assistants 2 2-Lts.
Provost 4 Havildar 1
Sepoys 3

Staff .. Sepoys 4
Medical Officer . 1 Lt. .
Nursing Orderlies 3

They will have the necessary medical equipment and the cooking utensils, etc, sufficient to feed at least 100 men at a time

Advance Collecting Post : This will be located somewhere near the Div H. Qrs.
Duties

1. Feeding of these men.
2. Further medical aid to wounded and urgent operations.
3. Immediate transfer of severe cases to the Main Collecting Post.
4. Arranging the despatch of all men to the main Collecting Station.

Organization :

Comdr. .	1 Major or Capt	Administrative Staff	15 Havildars 2
Assistants	3 Cpts		Sepoys 13
Provost ..	20 2-Lts. 1	Medical Officer	2 Cpts. or
	Havildar 2		Lts
	Sepoys 17	Nursing Orderlies	10

Main Collecting Post : This will be near Supreme H Q., I N. A

Duties :

1. Accommodation of these people
2. Clothing
2. Mental training with a view to infuse national spirit.
4. Categorising these men, i e.,

Category 'A' Those who had aknowledge of the movement and have come with an intention to join us

Category 'B' Those who had no knowledge but are willing to join now

Category 'C' Those who do not agree to join the National Army

On receipt of such information from the O C, Reinforcement the Supreme H Qrs will arrange

- 1 to organize arm and equip the men belonging to Categories A and B, and
- 2 to hand over those in Category 'C' to the Japanese authorities to be treated as Ps of War

Organization , 1 H Qrs Reinforcement Group (Comdr Reinforcement Group to command the Main Collecting Post)

- 2 Medical (it will be advisable to have this post near Base Hospital)

Medical Officers	3	Nursing Orderlies	15
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3. Four Officers from Enlightenment and Culture Department to be attached for mental and spiritual training

- 4 One copy M P (if this is not possible the O C, Reinforcement will use his own men for Police duty. If necessary, he can ask for duty platoon or Coy. from other units in the vicinity)

A diagram showing the working of the scheme is attached herewith. The number of posts will depend on the length of the front line and the line of communication. Before the scheme can be put into effective operation the Hikari Kikan will kindly ensure that

- 1 All the Japanese Officers and men are familiar with the policy of the Nippon Government towards India, I N A and the Indian Soldiers coming to our side.

On the night 30/31 March Khanjo and No 450 Unit will move forward from their concentration areas and carry out the assault on Pinyin at 0100 hrs and annihilate the enemy. No 545 Unit will send forward strong detachment to cut off from the East Roads (I) Pinyin-Tada, (II) Pinyin-Thabyewa, (III) Pinyin-Kama.

These detachments will be in position by 2300 hours on the night of 30/31st March. During the attack on Pinyin by No 450 Unit and Khanjo, No 545 unit will step and annihilate any enemy that tries to escape from Pinyin by these Roads and also to stop any reinforcements from coming into Pinyin from East and N E. No 531 Unit Operation Order No 2. They will carry sufficient mines to effectively block all roads against enemy tanks. Heavy artillery will support the attack from the direction of Oyin.

Action after the Attack On completion of the attack, all units of No 531 Unit will fall back on their original starting lines before daybreak. During the day the troops will be well-dispersed and every precaution will be taken against losses from enemy aeroplanes and A. F. Vs.

4. Administration

Supply routes for units will be as under:

(a) No 450 Unit.—Popaywa Daungie-Cross Roads (S. W. of Pinyin)

(b) No 545 Unit.—Popaywa-Seiktein.

As many bullock carts as are necessary will be commandeered locally by units and on termination of the attack will be returned to the owners. Ration water and other supplies. All unit demand will be submitted to D. Q. M. G. Popaywa, who will do his best to comply with them. A minimum of seven days dry rations will be dumped in forward areas under unit arrangements. S. A. A. A very small reserve of 303 S. A. A. Ball is available with D. Q. M. G. Units are requested to exercise utmost economy in the use of ammunition. A/Tk. Mines. A very limited number are available. These are being sent with trained engineers to assist units.

Medical. All casualties will be evacuated to Popaywa. A small quantity of bleaching powder for use in case where water cannot be boiled is being supplied to Units.

Inter-communication. No 450 Unit—No 531 Unit will be by wireless through Hosokawa Unit. No 545 Unit—No 531 Unit by Wireless. Battle H. Q. 531 Unit will move from Popaywa to vicinity of Seiktein on night of 29/30 March. Main H. Q. 531 Unit remain at Popaywa under command of Major Ram Sarup.

Special Instructions to Units.—1 Attack on Pinyin is more in the nature of a surprise guerilla raid with the intention of causing as much damage to the enemy as possible and then clearing out of it. Comds must use the troops very cautiously and avoid all unnecessary casualties. 2 Where possible some live prisoners will be brought back. 3 All papers, other documents and any unit distinguishing badges found in enemy camp will be brought back.

Distribution.—

No 450 Unit	1	
No 545	1	Shah Nawaz Khan Colonel
No. 50	1	Commander, No 531 Unit

Office copy

ACKNOWLEDGED

Exhibit YY.

To Major Kawabara

H O Div 2nd April 1945.

Information.—It has just been learnt by Telephonic communication with No. 2 Inf Regt that

1. The telephone line was cut in 5 places this morning. It has since been repaired. 2. Since early this morning there has been activity of enemy tanks, armoured car and lorry-borne troops on Legy front. One party of enemy approx 60 in strength came up to approx 400 meters from Legy. It was fired upon by our men and they have withdrawn. Fresh attack supported by tanks is expected. 3. Early today morning Legy was bombed and machine gunned very intensively by 13 enemy planes. Legy has been burnt. I.N.A. has suffered 6 casualties, one seriously wounded, 5 slightly.

(Sd) Shah Nawaz Khan, Col, 2-4-1945

Secret**Exhibit ZZ.**

Serial No 1, 6th April 1945

Sub.—TACTICAL MOVES.

Time-1200

Issued in confirmation of verbal orders given to Comds No. 747 and 801 Units by Comd No 599 Unit on 5th April 1945

Reference Map Sheet No. 84 O & 84 E

1. In preparation for the offensive role to be taken by the Main body of Unit No 599, the following Tactical Moves and reliefs will take place

- (i) No. 801 Unit will take over Popa defences from Incl Road Kyauk-Padaung-Popa to Incl Road Poda Pyinbin and relieve all troops belonging to 747 Unit by the evening of April 6
- (ii) No 801 Unit will take over the defences on Meiktila-Kyauk Padaung, and relieve all troops belonging to Unit No 747 by the morning of April 8.

W.E.F. the evening of April 9 Unit No 747 will keep itself in readiness to move out for any offensive role that might be allotted to it. 2 D Q M G Unit No 599 will endeavour as much as possible to assist units in transportation. Unit Comds will contact D Q M G for any M.T. required for advance parties, etc, that may have to go ahead and arrange for taking over the defences on Kyauk Padaung - Meiktila Road

(Sd) Shah Nawaz Khan, Colonel, Comd. No. 599 Unit AHF.

Distribution.—

No 801 Unit No 747 Unit D.Q.M G Hikari Kikan Office.

Exhibit AAA

Unit No 599

OPERATION ORDER No 6

MOST SECRET.

Time 1200 hrs

Map Sheet No 84L & 84F

COPY No 3

Map Ref 1250,000

Date April 1945

1 *Information*—Unit No 599 has been allotted new role and its responsibility will be as under—

- (a) Anti-Parachute work
- (b) Guarding the L. O C
- (c) Establishing law and order in areas where, I N A troops are stationed

In connection with para. (b) and (c) above, the troops of B.D.A. have rebelled and have formed bands of dacorts, who are looting the villages and also harassing the main L of G of the I.N.A. and the Japanese Forces. Our activities will mainly be against them.

2 *Intention*—In order to carry out their role, formations of Unit No 599, will move into the areas as shown below—

(a) Unit No 609 In its present area of Magwe-Mainbu Unit No 606 on being relieved will rejoin Unit No 603 at Magwe. (b) Unit No 747 In the area of Natmauk Taungdwingyi. (c) Unit No 801 In the area of Minhala (approx. 15 20 miles S S E of Magwe) to Sinbaungwe. (d) H.Q. Unit No 599 will move to a locality in Magwe area—Exact location will be intimated later

3 *Method.*

(a) Units will start moving independently from the evening of 10th April 1945. The move will be completed as soon as possible. All units will submit to these H. Qs. a detailed programme of their move from this station.

(b) *Routes.*

(i) Marching columns of —

Unit No 599 Unit No 801

will use cart track running through the following villages —

Kyauk Padaung—Ywala—Yezon—Okahliton

Wetmasut—Magwe.

(ii) Unit No 747 will use cart tract —

Kyauk Padaung—Kyatkun—Sangon—Magyigon Yamun—Natmauk—

Taungdwingyi.

4. *Admn.*

(a) *Tpt.* As far as possible, Units will make their own arrangements for transportation of their heavy baggage party to be left behind with the baggage, which will be transported, if and when the transport is available.

(b) *Rations*

(i) All parties except the Unit going to Natmauk will carry enough rations for the journey, plus 3 days reserve.

(ii) Unit bound for Natmauk will carry a minimum of 7 days' reserve rations. All rations that was issued as one month's reserve to Units in this area will be returned to D Q M G. Details to Units in this will be issued to Units separately by D Q M G. As on their charge, units will return exact quantities of Reserve Rations, especially rice and salt to the D Q M S.

(c) *Medical*—Medical Air Party Hospital closed here on 9th April 1945 patients and stores will be evacuated in accordance with the instructions issued separately by the A.D.M.S.

Special instructions in relation to the move of Formation of this Unit No 599 have been issued separately. These will be strictly complied with.

5. *Information* Immediately on their arrival at their destination, all Units will submit their ALL CORRECT (or otherwise) reports to H. Q. Unit No 599.

6. Acknowledge.

(Sd.) Shah Nawaz Khan, Colonel, Commander No 599 Unit

Distribution. No. 605 Unit. No 747 Unit No 801 Unit A D. M. S.
D. Q. M. G. Office.

Exhibit BBB

Most Secret

No A/11/43

No 599 Unit AHF Burma, 10 April 1945

No 605 Unit AHF No. 747 Unit AHF, No 801 Unit AHF.

Sub —SPECIAL POWERS OF SUMMARY PUNISHMENT FOR REGTL
COMMANDERS

To fulfil our new role, regiments will have to be dispersed in very wide areas and communication with the Division H Qrs will not be easy. In order, therefore, to allow the Regimental Commander, to deal firmly and promptly with all situations, the Div Comd on authority from the Supreme Commander, invests all Regimental Commanders with powers to award any punishment including death to any person or persons, guilty of gross indiscipline, disloyalty, desertion or any other serious crime. In doubtful cases, or in case when a Unit is within easy reach of Div H Qrs, Divisional Comd will be consulted in cases in which death is the sentence. In all cases where capital punishment has been awarded, a detailed report, in duplicate, will be submitted to these Head Quarters

(Sd.) Shah Nawaz Khan, Col., Offg. Comd. No 599 Unit, AHF

Exhibit CCC

EXTRACT FROM THE DIARY OF

Capt Shah Nawaz Khan (1/14 Punjab Regt) for the year 1944.

January 7 —Called on C-in-C Nippon Force

January 26 —Netaji inspected our troops at Field Firing practice, Major Ram Sarup posted to my regiment

January 27 —Dinner with Maj Kinawari 1900 hrs Called on Supreme Comd Nippon Forces, and received orders for the final move towards India

February 4.—First parties of No 1 Bn. moved to Arakan front First parties of No 2 and 3 Bns moved to Kalewa front.

February 5 —Regiment H Q moved off from Rangoon at 1800 hours

February 9 —3 parties of our Regiment have arrived safely

February 10 —More troops have arrived by train without incident. Went to Maymyo with Kimewari and Ram Sarup to call on Japanese GHQ. Maymyo Stayed the night with Mr Gopal Singh, president of B T C A simple but very sincere and straightforward man. News of brilliant activity of the I N A on Arakan front

February 11 —Called on the G O C North Burma Genl Moto Cuchi—a great soldier and conqueror of Bukit Tinah Hill. He was very kind and promised full aid to the I N A

February 12 —Met Mr. Jumman Khan of Hazro, Taj's relative. Left for Mandalay. Kimawari left for Kalewa by bus. I could not start owing to car trouble. Addressed the M. T Coy. They were all in great spirits. Many of them volunteered to go forward with the regiment. Received

Netaji's message of congratulations to I N A troops re. Arakan operations

February 20 —Went for a run in the morning Enemy aeroplanes M Gd. the Tps. nearby Hoping to move to Kalewa The lorry has not yet returned News that it has broken down on the way 20th at 2000 hrs. left Mutaik and arrived at Kalewa Camp Ram Singh with approximately 500 men left for Falam Two Coy of 3rd Bn left Mandalay for Pakouk.

March 11 —Went to Div H. Q. and met Maj Fujiwara. Very good news. Tiddim with 17 Div is surrounded Fujiwara hopes that by the middle of next month we shall be in Imphal Telephones to Thakur to bring 3rd Bn. immediately to Bygon. Hope that we shall be in time to attack Tiddim.

March 12 —3 Bn less 2 Coys at Pakouk has arrived at Rwigow Went and saw Fujiwara again. Move of 3 Bn to Tiddim is postponed as it has nearly fallen Have been ordered to take over L of C duty from Yazagyo-Mytha Haka Kimewari has moved to Haka I propose to stay here till I hear more definitely about the role of the Regt.

March 17 —Information received that 200 soldiers from Tiddim are running away and are now at Kalanghkua—west of Talam—approximately 60 miles—ordered Ran Singh there and Sikander to catch them Tried Nk. Mangal Singh and two sepoys of Parwana Coy At 1930 a formation of Br bombers and fighters 28 in all came and dropped some parachutists in Kalewa area

March 22 —Left post 5 at 0930 hours. On the way to Post 6 heard the news that Awal had captured 22 Chin soldiers belonging to Maj Manning's party Had lunch at Post 7 and reached Falam at 2000 hrs

March 26 —Recd Major Thakur Singh's letter He is very disappointed at the type of work our soldiers have to do and the treatment of Japanese.

March 30 —Boobie returned from Kennedy Peak His report is distressing The Japanese are using the I.N.A. crack Regt. as labourers. I am going to Haka to-day to see Kimewari in this connection. I wonder what is going to be the outcome of all this one-sided co-prosperity Left Falam at 1500 hrs. for Haka. Reached 16 M S at 2000 hrs Spent the night at Tao river Rained all night. No shelter

April 1 —When to inspect post on Klang Klang Road

April 3 —Inspected camp piquets near Haka Sabak and had a frank talk with Kimewari re the manner in which the Regt. is being used i.e. more as labourers.

April 7 —Stayed at Falam Sent movement order to Jangju to move to Haka Called up Comds. Dipak—Jangju BHR and Awal for conference

April 8 —Comds Jangju and Dipak arrived and recd orders All posts except BHR at 28 M S closed.

April 11 —Jangju closed at Falam Dipak has gone back to Nauchang Moving forward with LAJO tomorrow Completing all preparations.

April 14 —Klang Klang post fired at by the enemy Amnk took out coy patrol and returned at 2200 hrs No trace of enemy found. No casualties to us.

April 16 —At 0830 hrs Klang Klang post was fired at by the enemy He used mortars to-day Lt Lehna Singh very bravely chased him upto Nengrang Enemy strength - 70 Soldiers 13 mortar 12 mortar

- April 23* —Went out to recce Negiang and Klang Klang Captured 3 and killed 3 Chins Lehna Singh's Pl was first class—Amrit, Ram Sarup were also with me.
- April 26.*—1 Chin prisoner escaped from H Kikan
- April 28* —Order received from the Div. that the Regt has to stay Haka till the fall of Imphal
- May 10.*—Issued orders for raid on Klang to all Comdrs
- May 12* —Went for recce towards Nengiang, 28 miles of the Worst Went out at 0700 hrs and returned 2300 hrs Met Kimawari and received Div. orders to send Regt main body to Ukhrul
- May 13* —Kimawari left for Muitha Haka I am afraid I have to miss the raid. Issued orders to 3 Bn to move to Ukhrul
- May 21* —Arrived Tamu at 0300 hrs Went and saw Maj Fujiwara and Div Comdr. Met Khan and stayed in his dugout
- May 24* —Left Moreh at night and arrived in Humine
- June 4.*—Reached M S 30 and spent the night there Met the Comd. Let Div at 1600 hrs Role of the Div has been changed They are now going to participate in fight for Imphal Div Comd. was very courteous He inspired confidence. He has given me a chance to select our role in the coming operations Of course, my choice is 'Attack Imphal'
- June 14* —Stayed in camp Sent out 11ce collecting parties to villages Lt. Masuda called in the evening He tells me that Japanese are very near Imphal and that Palel is captured
- June 21* —I told Div Comd either to give us a chance to fight or to revert us to our own Div He promised to do something about it
- June 7* —Kimawari went to GHQ to take orders Men did not receive any rations 4 Garhwalis have died of starvation I and Ram Sarup have approached Hikari Kikan to do something about the rations They seem NOT to take the least notice of it I do not know what is the idea behind this deliberate starvation of my men
- July 15* —Due to starvation men are dying like flies Some committing suicide Japanese are giving no help
- August 8* —Piara's return from Yuwa with Kimawari's answer No arrangement for money or other help from him He has suggested that our sick men at Teraun should commit suicide

Exhibit DDD

EXTRACTS FROM THE DIARY OF

Capt Shah Nawaz Khan (1/14 Punjab Regt) for the year 1945

- January 15* —Stayed in Mandalay Lt Dhillon arrived and rendered report re situation at Mingyan
- February 19* —Col Aziz has fallen ill I have to take over No 2 Div
- February 21* —Leaving for front to-night
Left for Popa at midnight Netaji came to see me off and gave me all instructions
- February 22* —Reached Kyauk Padaung at 9500 hrs met Lt Dhillon and Jagir in village Indo They had managed to collect approx 500 stragglers. It has been a bad show, One Bn, surrendered—Hari Ram and

others bolted. Dhillon came with me to Popa. At 0700 hrs met Riaz and Sahgal. Met Comdr of Kanju Butai.

February 23—Kanju Butai has been rushed to Popa. All No 2 Regt. are going in first. Recd. Saku Butai order to push enemy across Irrawaddy. Went and received defensive positions. Lectured to all officers. Called on Kanju Butai Comd. and settled up various matters. Left for Meikulla at 2300 hrs. Issued operation orders to Sahgal and Dhillon.

February 25—Netaji arrived early in the morning. Went and saw him at 1200 hrs and explained Popa situation to him. He has made up his mind to go to Kyauk Padaung and Popa. 'I was dead against it as being too dangerous.' 2000 hrs Maj Takashi brought information that British had occupied Pinyin and were advancing on Taung Tha. Meikulla Bridge bombed by 60 B 24's.

February 28—At 0800 hrs Maj Takashi reported that a Mech. Bde. of British had reached Mahlaing only 10 miles from Meikulla and that there were no troops between there and Meikulla. We decided to make a dash for it at 0900 hrs and reached Indo at 0045. Spent day at Indo.

March 1—Reached Pynmana at 0500 hrs. Met Netaji at 1100 hrs. Discussed future plans and then rushed on to Rangoon to take command of No 2 Div. No 1 Div was reorganised and given a fighting role. Unarmed men and patients are being sent to the rear.

March 3—Reached Rangoon at 0900 hrs. Met General Kiani and discussed various details. Decided that I should take over command of No 2 Div. Heard about desertion of Riaz, Madan Sarwar and Dey. A very sad affair.

March 12—0200 hrs reached Yenangun. Met General Yamamoto. Left Yenangun at 0900 hrs. and reached Popa at 0800 hrs.

March 13—Talked to all officers of Div. Hq. Reorganised Div. Hq. No 4 are out and are expected to attack Taungzin to-night. At 0200 hrs visited Hq. No 4. Met Maj Jagir S. was there. He had no information about them.

March 14—1000 hrs. Col. Sahgal came and reported that the enemy on Pinyin side is on the run and that Pinyin has been occupied by the Japs. 1730 hrs. Staff Officers Maj Marata and Chief M. O. Kanletsu arrived to discuss various details. 2300 hrs. Col. Sahgal left with two Coys. to attack Pinyin.

March 15—Col. Sahgal with his force attacked the enemy in Pinyin on night of 15/16 midnight. No enemy.

March 16—Khan Mohammed attacked Sadi and pt. 1186. He had fierce hand to hand fighting for 2 hrs. Inflicted at least 200 casualties to the enemy. Fighting lasted from 0300 hrs to 0600 hrs. Men fought gloriously shouting Netaji ke-Jai. Our casualties were 1 killed and 86 wounded.

March 17—To-day at 1100 hrs. 1st Bn under Lt. Mohammed Husain was attacked by tanks. We suffered 50 killed. Tonight Khan Mohammed and Japanese again attacked Temple Hill 1186. I with Jagir S. made an attempt to get to 4 Regt H. Q. but could not do so owing to road being under enemy fire. Capt. Sahgal returned at 0400 hrs.

Bn Comdrs Mohammed Husain and Khan Mohammeds Met Maj. in good spirits, especially after they had been in two attacks, Watanbe and discussed defence plan.

March 20 —Received information that Khanjo are going out to attack in co-operation with Kantetsu. We have to take over complete defence of Kyauk Padaung-Meiktilla Rd —K P—Nyaunga Rd and Popaun. Went out tonight. Major Mehr Das returned from Yenang, collecting defences.

March 22 —Went out at 0800 hrs and spent whole day inspecting at 2100 hrs of No 2 Regt Jagu and Mehr Das went to see No 4 Regt.

March 25 —To day the orders for attack on Pinyin by Khanjo are changed. Now Khanjo and I N A main force will attack together inside Meiktilla. Orders to Gurbux to prepare for it. Recce. patrol went out and brought back information re enemy disposition.

March 26 —Had final discussion with Com Khanjo and decided on the role to be played by the I N A in the coming attack. Received letters from Netaji and Mahboob, warning me re some undesirable officers. Recce patrols have gone out in direction of Pinyin.

March 27 —Issued operation orders for attack on Pinyin. Refor O T S reports from Hussain and Gurbux. Selection of candidates, cd situation has started.

March 28 —Maj Mehr Das gone out to recce area for Div H. Iq operation orders from Nos 2 and 4 have been received.

March 29.—Tps are moving out. Hq Div going out to the arc moving to tions. Left Popa at 2200 hrs and went forward to see Tps vs that Col their concentration areas. Halted at Legy and heard the news. Decided to Sahgal, Inzuka and some other officers were ambushed. ed up continue advance. Sahgal and other missing officers also turn.

March 30 —They had a most miraculous escape. We recovered our cars. I returned to Div Hq at 0600 hrs. Spent the day in Bivo. At 2300 Coy at Kabyo has been attacked. Very extensive air activity. guns were hrs left for Legy. Tonight was zero day. At 2100 hrs al demons- attacked by air and 2 destroyed. We could not make any re- tration. Captured 1 Truck 314 ton.

March 31 —Returned to Div Hq at 0600 hrs. Popa heavily bombed and m gunned. Supplies hit. Bagri with copy from Kabyo returned. he saved Japanese were full of praise for him. Yesterday at Kabyo, m to send the Japanese Coy, which was encircled. Today I ordered him to send one coy to Gwedekoa. Except for aeroplanes a quiet day. At 2200 hrs went and saw 2 Bn on Kyauk-Padaung-Meiktilla Road.

April 1 —Returned at 0700 hrs. Spent the day in Camp. Recce report from No 4 that they carried out the attack on Pinyin to guns surrounding Rds, but the Japanese put off their attack due to not turning up.

April 2 —This day started with unpleasant shocks. Sig Officer Noed from 2 Regt deserted. Capt Mohammed Husain and his Adjutant deserted and No 4 Regt. This afternoon at about 1630 hrs enemy shelled met m gunned our positions at Legy. 6 wounded. Went to deserting Col Sahgal at 0200 hrs. Learnt that his trusted officers were Popa at Lt Yaseen, Lt Sadeed, Lt Gharib Singh deserted. Returned to 0500. Sent up 1 coy and M. M. Gs to support him.

- April 3* —11 50 Col. Sahgal reported that the enemy 2 Bns. strong with 12 tanks was advancing on them. Enemy's strength increased to 50 tanks 10 guns and 1000 men. Attacked our positions furiously through the day. Some enemy came in the rear of us. He was attacked and thrown back. At 2200 hrs. position satisfactory. Went forward to meet Comd. Sent 1 coy in support. Enemy shelling positions could not meet Comd. till 0400 hrs. Then he was falling back.
- April 4* —He reported that most of the men, incl. Bn. Comd. Jhajeen Shah have deserted. Only approx. one coy is left of that Bn. Men have taken away their arms with them. Our men fought bravely but soon after the attack they started walking over. It appears they have had enough. Discussed details with Col Sahgal for future course. We must push on again. Met Kuwabara and told him my point of view, re Two Regt. withdrawal.
- April 5* —1 Col. Dhillon arrived. 2 Recd Kantetsu orders to reorganise and prepare for offensive roll. 3 Discussed plans with Dhillon and Sahgal and allotted them respective role, i.e. No 4 to take over defences K. Padang and Popa. Asked Kuwabara to inform Kantetsu of my intentions to go out again.
- April 7* —Our forward Coy in Kyautaga area is under gun-fire. Japanese are still holding Legye. Br are going rd their flanks. Issued order to Gurbux and Sahgal re taking over of defences.
- April 8* —Kuwabara came and told me that we had to go back in the area of Magwe Minbu Taungdwingyi and Allenmayoo. I heard the Burmese army has revolted against the Japanese. Col Pulsikar arrived from Prome.
- April 10* —Issued orders for the move of Regts. Today at 1400 hrs our area of Hospital was heavily bombed. 81 killed 30 wounded. Sick men and other Div ancillary unit have moved out to their new areas. Enemy gun-fire is sounding very near.
- April 12* —Spent the day at Popa. Heaviest shelling on K. P Nyangue Road. Enemy encircled our forward Coy. Also came astride the rd. K. P. Popa. Left Popa at 0200 hrs. On the way fired at by enemy patrols. All Tpt. left on the way. Arrived next day at Ingodwaki. Loss of control on the way. 3 Bn still at Popa.
- April 13* —0800 hrs. arrived at Indowakki. Spent the day there and left at 2100 hrs. Col. Sahgal's main force has arrived. Bagri is also through. Only Kanwal Singh Coy is left behind and encircled by the enemy at Popa.
- April 14* —At 0200 hrs left Kyanttan and reached Eino at 0800 hrs. Spent the day in Pungi Chong and left at 2200 hrs. Going is very heavy. Troops are very tired. Br Forces seem to be converging from all sides—offensive toward oil field Yenangyaung seems to be well on the way—wonder if we will get through.
- April 18* —0400 reached Magwe—Met Col. Hussain and he explained the present situation to me. Spent the day at Magwe. The situation is developing fast. Br have occupied Taungdwingyi, Japs and I.N.A. counter-attacking. 5 tanks attacked our position astride Magwe Taungdwingyi Rd. They withdrew after 2 hrs. fight. Telegram recd. from Sahgal that he is making for Taungdwingyi. Rations short. Some tps moved across the river to Minbu. Paratroops dropped near an outpost. Man S moved out with his Bn to reinforce our posts.

April 19 —More tps have arrived from Popa. A B and Jagir arrived. No news of Ram Sarup. At 1500 hrs Br Tanks and carriers broke into our position at Magwe. No organized opposition could be put up. Magwe was occupied by them. Travelled from 1500 to early next morning. Crossed the river at Kanni and made westwards with few men. Husain, Gupta, Mehr Das, all missing. No news of Tich at Mambu or Mausing in his position.

April 28 —Stayed at Minde. Ram Sarup and D. C. Negi 3/1 have gone ahead. Recd report about our men at Kama.

Recd Maj Gupta has arrived there.

May 1 —Reached a village 5 miles north of Prome. Spent the day there. Learnt that all our parties are making for Moulmein. Japs say Toungoo is still in their hands and that route to Thailand is still open. We are making an effort to get out of the encirclement. Left all sick and wounded personnel. Maj Ranganadan in Kakabusti and marched off to Prome.

May 4 —Spent the day in a small hut. Rained all day. The Japanese have left us completely in the lurch. They are running themselves and are not bothering about us. To-night we made very little progress.

May 5 —0700 hrs reached a village 2 miles south of Okpo. The Japanese are going East from Okpo. We are going to Leptedau. They have no further use of the I N A. All Liaison Officers, etc., were withdrawn at Prome. The discipline and morale of tps. have deteriorated, no control officers are leaving the men.

May 7 —0800 hrs After travelling all night reached a village 10 miles north of Taikchi. Discipline and morale of tps is completely gone. One soldier fired at Col Dhillon but luckily missed. He was put away. Left the village at 2000 hrs and reached Taikchi at midnight and found the road to Rangoon blocked.

May 12 —0700 hrs Started and reached Wata at 1000 hrs where we stayed for the day. Here, found that Pegu was occupied by the Br 10 days back and that Wawa is under their control. Now there seems to be practically no chance of our getting through. Sent a patrol to next village to get more information. Decided to spend the night at Wawa.

May 13 —Full information re Br forces recd. Appears to me that we are completely cut off. No way to escape. At 1900 hrs left the village and marched to a jungle where I gave full facts to the men. Majority decided to become P of W. Yet I am not prepared to surrender and would like a little more lingering about in jungle of Burma.

May 14 —P of W Party marched off at 1000 hrs. With Major Jagir and A B in charge. My party with Col Dhillon, Major Mehr Das and 80 men stayed behind to see what the fate has in store for us, at 1600 hrs started from a village 7 miles of Pegu and reached village Loga approx. 16 miles west of Pegu. There are also many Japanese who are trapped in this forest. All the inhabitants are very pro-British. Our strength now is only 49.

May 17 —At about midnight 161/17 as entering the village Sitpinzcix we were heavily fired upon by men of 2/1st Punjab Regt from a range of 15 yards. Civilian guide was killed. I lost my bag. Spent the night in jungle. 0800 hrs started but found all routes blocked. At 1800 hrs captured by 2/1st and taken to Pegu Div. Hq. Corp Hq and jail.

Exhibit EEE

No 245/2/2/A H Qrs. Supreme Command, A.H.F
Burma, 9th February 1944.

All Units

Subject —SPECIAL ORDER OF THE DAY

A Special Order of the Day by Subhas Chandra Bose, Supreme Commander Azad Hind Fauj is forwarded herewith. All unit Comds will please arrange to hold a parade of tps under their Comd and acquaint them with all available details regarding the action on the Arakan Front. The special order shall be read out to the tps on parade and it will be translated into Hindustani and any other language that may be found necessary. Unit Comds. will ensure that the contents of this order are made known to all those who may not be able to attend the parade.

(Sd) P K. Sahgal, Major

Copy Read H. Qrs., S C for similar action as far as tps in Malaya are concerned

Special Order of the Day

**SUBHAS CHANDRA BOSE SUPREME COMMANDER, AZAD HIND
FAUJ BURMA.**

Dated 9th February 1944.

The eyes of the whole world are focussed on the Arakan Front where events of far reaching consequences are taking place to day. The glorious and brilliant actions of the brave units of Azad Hind Fauj working in close concert with the forces of the Imperial Nippon Army have helped to foil all attempts by the Anglo-American Forces to start counter offensive in this sector. I am sure that the brave deeds of our comrades on the Arakan Front will be a great inspiration to all Officers and men of the Azad Hind Fauj whether they may be stationed at the present moment. Our long awaited march to Delhi has begun and with grim determination we shall continue that march until the tricolour National Flag that is flying over the Arakan mountains is hoisted over the Viceregal Lodge and until we hold our victory parade at the ancient Red Fortress of Delhi. Comrades officers and men of India's Army of Liberation. Let there be one solemn resolve in your hearts— Either liberty or death. And let there be but one slogan on your lips 'Onward to Delhi. The road to Delhi is the road to freedom. That is the road along which we must march. Victory will certainly be ours. Inqlab Zinda bad. Azad Hind Zindabad.

Exhibit FFF

SADAR DAFTAR, ALA KAMAN AZAD HIND FAUJ

(Head Quarters Supreme Command, I N.A.)

D O No 15/2/18/MS

Burma, 16th June 1944

Dear Colonel,

Your report, dated the 15th of May together with your points for Netaji were received here on the 4th June. A copy of your telegram asking for lorries horses sugar and oil etc. was also received on the same day. Major N N Khosla together with Rear H Qrs had already left. I hope the M T with the Rear H Qrs would be able to relieve the transports situation to some extent. We are doing our best to buy some horses but unfortunately most of the good horses have already raised an A T Platoon from among the old 3rd Cavalry personnel and as soon as we have bought 20 horses arrangements shall be made to send them on to you. Four thou

sand ground sheets have already been sent with your Rear H Qrs No 2, Engineer Coy, No 2 Hospital, No 1 M T Coy and No 1 Mortar Coy have already left for the front No 1 M T Coy and No 2 Eng Coy shall come under command of No 1 Div after they arrive in Mandalay. Although I have not been able to get the Hikari Kikan to state in absolutely concrete terms, they have given me to understand that No 1 M T Coy shall be employed to carry out tpt duties for No 1 Div. We tried to get a wagon to send some soap, gur, oil and mess tins to you but unfortunately were not successful. However, a wagon has been promised us next week when No 4 Engineer Coy shall leave here. At present communications between our H Qrs and the front line units are most inadequate. We have started a weekly courier service between Rangoon and Mandalay and from there the H Qrs in Maymyo are trying to make arrangements for D R. L. S. to the front line. I have also taken up the question of wireless communications with the Hikari Kikan. Their original objection was that our cipher was too simple, however, we produced other modified forms of our cipher which came up to their standard, but they wish to make another code based on the Nippon Army Code for us. Even after that the question of equipment and trained personnel shall still remain and we may have to fall back on using the Nippon Signal Units to send our messages. In that case a code consisting of numerals alone may solve the script problems. I am at present trying to find some solution to this problem and if you can help me by some suggestions, I shall feel most grateful. Every one here has been most thrilled to read about the bold action of the Unit No 24 from 24th April to 6th May 1944. I shall feel very grateful if you will please convey my heartiest congratulations to Col. I. J. Kiani, Pritam Singh and the others who took part in it. Staff Officers of the Mori Head Quarters, from time to time, inform us of the very good work being done by the units under your command and the other day we were told by a senior officer of Mori H Qrs who has recently returned from the front line that he had met you in the front line and that all the neighbouring units spoke very highly of your brilliant leadership and the wonderful work being done by the units under your command. It is indeed a matter of pride for us all that the vanguard of the I N A is creating traditions which the following units shall do well to follow. Please give very best regards to Major Hassan and other officers.

With best regards 'Jai Hind'

Col M. Z. KIANI, I N A

Yours sincerely,

(Sd) P K SAHGAL

Exhibit GGG

SADAR DAFTAR, ALA KAMAN, AZAD HIND FAUJ

(Head Quarters, Supreme Command, Indian National Army)

Rangoon, 20th August, 1944

Dear Zaman,

I received your report, sent from Yeu, on 23rd August 1944, together with a copy of Col Shah Nawaz's report (incidentally original of that report has never been received here yesterday) and I immediately took up the reports to Netaji. Yesterday evening Netaji had a conference with Lt Gen Ishoda concerning the matter mentioned in your report, I was also present during the discussion. Throughout the conference, although he promised to send telegrams here and there, it was quite apparent that either he (Gen Ishoda) could or would do little.

Ever since, the Japanese have decided to go on the defensive. I feel a change in their attitude, which I find very difficult to explain may be you can explain it better than I can. Anyhow, one thing is certain that we can expect little help from Nippon authorities in Rangoon. You will have to tackle Hayachi Butai to solve

most of your problems. We even offered to send a steam launch from Rangoon to relieve a Nippon steam launch in the front line, which could be despatched immediately to Yirwan to evacuate the four hundred men of No 1 Grla. Regiment. But even that they did not agree to. We have managed to collect about six lorries which are being touched up in our workshop and as soon as they are ready, they shall be sent forward to help solve the transport problem. Another emergency hospital to function in Mandalay has also been organised and as soon as we can get some equipment from the Japanese, it shall be sent there. Arrangements are also being made to buy enough cloth to give two sets of clothing to all our men coming back and a boot shop is also being organised to make enough boots for whole of No 1 Division. Our main difficulty is to get the materials, they are not available at any price. We, here, are trying to do our best, which is mighty little, to help the people coming back. Feeling of impotence and frustration for not being able to do anything to lessen the suffering of our comrades is terrible. Lt.-Col. Habib-ur Rahman has gone to receive the new area where Nos. 1 and 2 Div are going to be sent, and he is expected back here any day. As soon as he returns I shall try and move up to see if I could be of any help. Please give my best regards to Inayat, Hassan and Arshad.

Yours—(Sd) PREM.

Exhibit HHH

Most Secret.
Immediate.

No 104/154/G
Rear H. Qrs. Supreme
Command, A. H. F.,
Burma, 21st August, 1944.

Comd. No 1 Division.

Sub —Situation Report.

Reference your report, dated 13th August 1944 sent from Yeu to Rear H Qrs No 1 Div, and forwarded on to the Supreme Comd. under Rear H Qrs. No 1 Div No 77/8/44, dated 15th July and the report submitted by Lt. Col. Shah Nawaz Khan Comd No 1 Grla Regt

*1 The Supreme Commander took up the matter with the Chief of the Hikari Kikan, who has promised to take the following action in the matter:—

- (a) Approach the Mori Head Qrs. to allow No. 2 M.T. Coy, I.N.A. to retain their lorries until the evacuation of No 1 Div troops is completed.
- (b) Send a telegram to make arrangements to supply rations to 150 men in Mawlik, if these men have not already been withdrawn.
- (c) Send a telegram to Hayashi Buta to try and arrange the withdrawal of 250 men from Sittong by boats.

*2 It is not possible to send any boats from here to Tirwan and it also appears that the Yeu river is in floods and transport up-stream is most difficult, however Chief of Hikari Kikan has promised to take up the matter with proper authorities to arrange for the evacuation of these 400 men of No 1 Grla. Regt. in Tirwan. If it is not possible to evacuate these men at the present moment, arrangements shall be made to send ration supplies and medicines to them.

3 The Chief of Hikari Kikan pointed out that by the time reports from No 1 Div are received in Rangoon it is sometimes too late to take any action there fore, he suggested that Comd No 1 Div should stay near the H Qrs of Hayashi Army, who may be able to help in solving our problems. The Supreme Comd

has agreed to this suggestion and wishes Comd No 1 Div. to establish his H Qrs in the vicinity of the H Qrs of Hayashi Butai

(Sd) P.K. SAHGAL, Lt -Col for Assistant Chief of Staff

Copy to —

H Qrs. Supreme Command, Rear H Qrs No. 1 Division.

*I have just been informed that the Hikari Kikan have already taken action on these points.

(Sd.) P K Sahgal, Lt -Col.

Exhibit III

Most Secret

No 103-2-11-G,

Immediate.

Rear H Qrs., II. S C. A H F Burma, 31st August, 1944

To

H. Qrs. Hikari Kikan, Rangoon.

*Sub:—*Movement of troops

Lt Col Takagi of H. Qrs Hikari Kikan gave the following advance information to Lt. Col. P K. Sahgal of Rear H. Qrs No 2 Supreme Command, A H F on 30th August 1944:—

The H. Qrs of the Mori Army are going to issue orders to the following effect in the near future:

The following units of the I N.A at present under the command of the Hayashi Army shall revert to the command of H Qrs, Supreme Command, A.H.F.—

(a) No. 1 Division less 1st Bn. of 1 Grla Regt. (b) No 2 Engineering Coy (c) No. 4 Engineering Coy (d) No. 1 M T. Coy. (e) No. 11 M.T Coy. (f) No 2 Hospital. (g) No 1 Medical Staging Section.

2. These units shall revert to the command of H.Qrs. Supreme Command, I N A., on the day of their arrival in Mandalay

3. The future location of I N.A troops shall be as under —

(a) No 2 Div will move to the Pakaku area. (b) Two Regiments from No 1 Div. will be in Myingyan area. (c) Remainder of No. 1 Division will be in Pyinmena area.

4. Supply points for these units will be at Myingyan, Pakakku and Pyinmena.

5 The provision of medicines and building of barracks in these areas shall be the responsibility of the Nippon Garrison Commander of Mandalay.

6. No 2 Hospital, Menywa, as soon as situation permits, will start evacuating its patients and when all the patients have been evacuated the Hospital will leave that area and move to a place to be selected by the H Qrs, Supreme Command, A H F.

7 Wherever the accommodation is not available new barracks shall be built. The H Qrs, Mori Army, takes the responsibility of supplying the necessary materials and funds, but the construction work shall have to be carried out under the direction of the Engineers of the I N.A With reference to the above information, it is requested that when the final and executive orders are issued by the Mori Army, administrative details should also be worked out and special instructions issued on the subject at the same time. It is considered most necessary that

information on the following points should be included in the administrative instructions

- (i) The method of sending supplies from the Nippon supply points to I N A Units
 - (ii) The amount of material that shall be provided at each place for building of barracks
 - (iii) The amount of money that shall be placed at the disposal of I N A for carrying out these construction works.
 - (iv) When will the Nos 1, 2 and 4 Eng Coys of INA be available to be sent to the areas where the construction work has to be carried out
 - (v) What other facilities for this construction work may be expected from the Nippon side.
 - (vi) What shall be the means of communication between H Qrs Supreme Command, I.N A and No I and II Divisions of the I.N.A.
 - (vii) What shall be the means of communication between the troops of No 1 Div situated in Pymmena area and other troops in Myingyan area.
- (Sd) P K. Sahgal, Lt. Col Asstt Chief of Staff.

Exhibit JJJ

Secret.

No S/210/21/12

No 210 Unit A H F Burma 7 2 1945.

To

202 Unit A H F

Sub —Certificate regarding state of readiness

Ref —Your No 11/68/G dated 27th January 1945

Certificate asked in your a/q letter is appended below—

- | | |
|--|-----|
| (i) Ready for fighting | |
| (ii) 95 O Rs. (Officers deficiency will be made good Regimentally) | |
| (iii) As per annexure 'A' attached. | |
| (iv) (a) Permanently unfit | NIL |
| (b) Weak personnel left in line to recoup their health | 147 |
| (c) Sick in Hospital | 60 |
| (d) On the way to Burma | 113 |
| (e) Going under courses in No 22 camp and 1 Trg Camp | 11 |
| (f) Employed in records office Syonan | 2 |

Total 333

(Sd) P K. Sahgal Lt Col, Commander No 210 Unit A. H F

CRIME REPORT

Charge against No. 42440 Sepoy Hari Singh

No 42570 Sepoy Duli Chand

Place Date of offence Offence

Burma 28th February, 1945 (1) I N A Act Sec 35

DESERTION

In that they W O A S deserted from the front line on 28th February 1945 at 2230 hrs until apprehended by a Unit patrol sent for the purpose at 1200 hrs on 2nd March 1945

(11) I N A Act Sec 29 (c)

DIRECTLY OR INDIRECTLY HOLDING CORRESPONDENCE WITH THE ENEMY

In that they, W O A S attempted to communicate with the enemy on 28th February 1945, vide Exhibit (a) attached.

Service years —4 3 months
Date of last record entry —Nil
General character —Bad

UNIT No 422

No 42537 Sepoy Daryao Singh

No 41961 Sepoy Dharam Singh

Name of witness Punishment awarded By whom awarded and date

Remanded for Div (Sd) P. K Sahgal, Lt-Col
Comd 's trial

(Sd) G S Dhillon, Major.

Sentenced to death under the authority of Supreme Commander A H F. letter, dated 21st February 1945, to No 2, Inf Regt and Grla Regt

Documentary

(Sd) G S Dhillon, Major

Commander Unit No 420
Signature of O C Burma
Dated 6th March, 1945.

I A F D—901.

Exhibit LLL

Most Secret

No 599 Unit A.H.F

Dated 6th April, 1945

No 747 Unit, A H F

Subject Legyi Operations.

In continuation of this office report forwarded under No S/25/17/G, dated 2nd April 1945, a report called for under your No 2/XX/G dated 6th April 1945 is forwarded herewith.--

1st April 1945 - A Nippon platoon stationed on hill feature 1395 astride Seiktin Welaung Road sent the following report about the enemy movements -

- (i) At 1130 hrs. 10 enemy tanks with 50 men were seen going towards Legyi from Welaung
- (ii) At 1530 hrs 18 lorries 2 tanks 1 armoured car 6 motor cycles and 2 guns were seen moving towards Legyi from Welaung. Out of these 11 lorries were loaded with stores and 7 lorries carried approximately 80 men.
- (iii) At 1600 hrs 1 tank was seen moving towards Legyi

All the tanks in the above-mentioned enemy force were medium tanks. This force was seen passing the road nullah junction Pt 1062 south of Seiktin map sheet 84 0/8 but no enemy was observed in the vicinity of Legyi and it was not clear whether the enemy were contemplating an attack on Legyi or whether he intended to go through Seiktin towards Kabyu. A fighting patrol under S O Abdullah Khan of 546 unit was sent to Seiktin area. This patrol contacted one small enemy fighting patrol in the vicinity of Seiktin but no enemy formation was seen in Seiktin area. The patrol returned to the base at 0400 hrs on 2nd April 1945. One recon patrol under S O Ram Dutt of 546 unit was sent to Tada to bring back information about the enemy in that area. This patrol did not return by day break on 2nd April 1945. 2/Lt Gharib Singh Mortar Pl Comdr of 546 Unit deserted during the night. There was no enemy activity during the night.

2nd April 1945--(i) An enemy force between 500 to 1000 strong was seen in the vicinity of the cross road on the 25 milestone Welaung Seiktin Road.

11 30 hrs There were few lorries and a few motor cycles with this force.

(ii) Another enemy force about 1000 strong and some tanks were seen in the vicinity of the Nullah North East of the cross road at the 25 milestone Welaung-Seiktin Road. This enemy force was seen digging in.

13 10 hrs 13 enemy planes heavily bombed and machine-gunned Legyi for about 40 minutes. The whole of the village was set on fire and some damage was done to our positions on the left of the road but our casualties were only slight. As soon as the air raid was over enemy artillery opened harassing fire on our positions. This harassing fire was continued until 2005 hrs.

1600 hrs. (iii) 3 enemy tanks were seen passing Thanbin village and 3 lorries 1 gun and 40 men were seen under the palm trees in the vicinity of Thanbin. It appeared that the enemy was carrying out a recon of that area.

1700 hrs (iv) An enemy force in 5 lorries supported by tanks moved towards Seiktin and Legyi. In front of this force were some dismounted men

who advanced forward pretending to be gathering something from the fields on either side of the road. When the enemy came within range, 1 section of machine gun opened fire. A number of the enemy were seen falling down and the remainder disappeared into the nullah. The tank and the lorries fled towards the cross road on the 25 mile-stone Welaung road. One of our machine-guns was fired personally by Lt Yasin Khan, the M G Coy Comdr. During the day no other enemy force approached Legyi. The enemy force that had moved towards Thanbin also returned towards the cross road.

2200 hrs. (v) Lt. Yasin Khan, Lt Mohd Sadiq, S O Abdul Hakim with some N C.Os and men deserted

2330 hrs. (vi) S O Ram Dutt and his men who had gone on patrol duty to Tada area, the previous day, returned and reported that there was no enemy in Tada area and that Seiktin was also clear of the enemy

(vii) It was quite apparent that the enemy, during the day, had been reconnoitring and feeling our positions and that a full scale attack was imminent the next day, therefore 1 Coy from 548 Unit under the command of 21 Lt. Kanwal Singh was brought up and put into position on the right flank

3rd April 1945 — A great deal of alarm and despondency was observed among the officers and men, owing to the desertion of Lt Yasin Khan and his companions on the previous night. Every body appeared to feel that the enemy had full information about our dispositions and as he was such overwhelming strength, our case was hopeless. Lt Khazin Shah was also in a very bad of state nerve. I realised that he was not fit to command the battalion any more, therefore, I sent him to keep an eye on A Coy Comdr whose movements were also suspicious and I personally took over the direction of the battle

1130 hrs (i) An enemy force, composed as under, was seen moving towards Tasbaukkon and his forward elements had already reached Thanbin —

Medium tanks 13, Light tanks 30, Lorries 60, Guns, more than 10, Infantry 1,000.

This report was given by a Nippon O P which was in Legyi village area and it was confirmed by Comdr C Coy which was the left forward Coy of 546 unit. Later a part of this force was seen to be returning towards Seiktin and a large number of troops were seen debussing in the nullah, North, North-East of Seiktin. A group of officers was observed carrying out recce and issuing orders under a palm-grove on the right of the road, about 2 miles in front of our positions.

1200 hrs (iii) Enemy artillery opened harassing fire on our positions

1300 hrs (iv) An enemy force consisting as under, was seen advancing along the road towards Legyi —

Medium tanks 11, Armoured cars 30, Lorries 60

This force halted about 1000 yards in front of our position and deployed

1330 hrs (v) A small force of the enemy went round our right flank and attacked our 'B' Echelon. This was a complete surprise and our men were caught cooking food or carrying ammunition, rations and

Water The casualties on our side were very heavy. The enemy occupied that area and was joined by some enemy tanks which moved round our left flank. No information of the action was received in the H Qrs until 1900 hrs.

1345 hrs. (vi) Heavy shelling on the right flank followed by an enemy attack by approximately one Battalion on the position occupied by one coy of 548 unit. The place was gallantly defended by the coy and the enemy was pushed back after suffering heavy casualties.

1400 hrs (vii) Approximately 1 platoon of the enemy opened light automatic and mortar fire in our position from the high ground astride the road in our rear. This fire was returned and the enemy was dislocated from his position.

By this time enemy artillery and mortars were shelling us from the front and our right rear and left rear.

1600 hrs. (viii) Enemy artillery opened rapid fire on the right flank and continued the fire for approximately 10 minutes. This was followed by an attack by approx. one enemy battalion on 1 coy of 548 unit. This coy once again defended their position most gallantly and drove the enemy back, who after suffering heavy casualties fled in disorder.

During the whole of this operation 2/Lt Kanwal Singh the Coy Comdr, and Havl. Abdul Manan, one of the Pl. Comdrs stood on top of 2 hills and directed the fire of their units. These two brave officers did not stir from their command posts, even when the enemy small arms fire was concentrated on them. It was due mainly to the gallant action of these 2 officers that the enemy was beaten off.

By now it was apparent that the enemy was determined to make a break through on my right flank. Therefore I decided to withdraw back into reserve C coy of 546 Unit which was on the left of the road. Accordingly I approached the Nippon Coy Comdr in that area and requested him to assume the responsibility of stopping an enemy penetration from that side and linking up with B Coy of 546 Unit which was covering our left flank. This plan was agreed to and I ordered C Coy Commander to withdraw his coy back and put one platoon astride the road south of Legyi and the remainder of the coy to be in reserve, prepared to counter attack in any direction where the enemy may penetrate.

1900 hrs. (ix) Report received about the enemy attack on our B Echelon and the enemy occupation of that area. Orders issued for C Coy to attack and drive the enemy away from that area. When these orders were issued, Lt. Khazin Shah reported to me that there was only one Pl. of C Coy available. The other two platoons under their commanders S.S.O Barfi Ram and Hav Baldev Singh came running towards them and after a short conversation with the two platoon commanders, these 2 platoons and one mortar platoon went over to the enemy. This matter was reported to Lt. Khazin Shah by a Tamil soldier, who managed to get back.

I issued orders to withdraw one Pl. from A Coy and 2 sections from 2/Lt. Kanwal Singh's Coy, this together with one Pl. of C. Coy under the command of Lt. Ganga Singh was to immediately attack the enemy in our B Echelon area. I ordered 2/Lt. Bhopal Singh Regt Intelligence Officer, to accompany Lt. Ganga

Singh Lt Khazin Shah was in the meantime to look after A Coy in the absence of Lt. Ganga Singh. The attack was supported by 2/Lt Kanwal Singh's Coy. Two sections of 2/Lt Kanwal Singh's Coy did not arrive in time but the attack was launched by two Pls. at 2100 hrs and was completely successful. The enemy after suffering heavy casualties fled in disorder.

1930 hrs. (x) Heavy artillery fire on our right flank and rear and 2/Lt Kanwal Singh's Coy. was attacked for the third time and once again the attack was beaten off.

2100 hrs. (xi) An enemy force about two Coys strong accompanied by tanks moved towards the left flank of B Coy of 546 Unit which was covering our left flank but this force was pushed back after a short skirmish.

2130 hrs. (xii) Report received that the enemy had been completely cleared from B Echelon area and that the attacking gp under Lt Ganga Singh had occupied a position on the hills astride the road south of Legyi.

(xiii) Report received that Lt Khazin Shah with whole of his Bn. H Q and one Pl of A Coy under S O Abdullah Khan had deserted. This matter was intimated to 531 Unit and it was requested that reinforcement should be despatched immediately. Major A.B. Singh from 531 Unit informed me that one Coy 548 Unit under Major B S Negi was moving to reinforce Legyi.

(xiv) Report received that Lt Ganga Singh, 2/Lt. Aya Singh and 2/Lt Narindai Singh had deserted. Ordered 2/Lt Bhopal Singh to take command of A Coy. By now whole of the Bn. H Q and all the five Coy Commanders with about 200 men including the whole of the mortar coy with their mortars had gone over to the enemy side. The remainder of 546 Unit could not be trusted. One Coy of 548 Unit had fought most gallantly the whole day and by now was completely exhausted. The men had lived on biscuits and one w/bottle of water for 24 hours and were completely overcome by thirst and fatigue and were not in a position to stand another onslaught by the enemy.

4th April 1945 — 1 Coy. of 548 Unit with 1 section of M Gs under Major B S Negi arrived. They had left the road well clear off Legyi and approached our position from the east. They were heavily fired on by the enemy, but luckily suffered no casualties.

I now appreciated the situation as follows. —

(a) Our position was completely surrounded and the enemy was overwhelmingly superior in numbers and armaments. (b) The morale of 546 unit was very low and it was most likely that some of them may possibly go over to the enemy. (c) All the officers and men were completely exhausted and unable to face another attack by the enemy.

Therefore I sent for the Nippon Coy Commander to consult him about our future action. He reported to me that another Bn of his Regiment was moving up to occupy that position.

I decided to withdraw my tps on the arrival of Nippon Bn and I rang up 531 Unit to ask the Commander 531 Unit for orders, but as the Commander 531 Unit was not available I decided to act on my own initiative.

(v) I issued orders that on arrival of the Nippon Bn the I N A Unit in Legyi area were to fight their way eastwards. Soon after I issued these orders, I discovered that the enemy had left the road and that the road between Legyi and Popa was clear. Therefore, I altered the original orders and issued instructions to withdraw along the road.

- 0430 hrs (iii) I received the information that the Nippon Bn. had arrived.
- 0500 hrs (iv) Withdrawal was commenced and carried out without any casualties

SPECIAL NOTES REGARDING DESERTIONS

The three most salient features re these desertions from No 546 units are

(a) All the officers who have deserted had hereto worked most sincerely and considered very outstanding. Specially noteworthy among them were, Lt Khazin Shah, Lt Yasin Khan Lt Ganga Singh 2/Lt. Chain Singh 2/Lt Balwant Singh, S O Barfi Ram, S O Abdullah Khan, S O Abdullah Hakim and Hav Baldev Singh. On many occasions these officers had proved their devotion to the cause, and fought bravely and I had no occasion whatsoever to doubt their loyalty

(b) None of the officers who have gone over ever showed cowardice, and right up to the time they went over they fought most courageously

On the 2nd when the enemy approached our positions Lt. Yasin Khan personally manned a M. Gun and opened fire on the enemy and throughout the action under heavy enemy artillery fire, he was going from post to post keeping up the morale of the men. On the night of the 29th when my party had been ambushed 2/Lt Balwant Singh S O Barfi Ram and Hav Baldev Singh showed complete disregard for their personal safety and fought most bravely

S O Abdullah Khan had already distinguished himself for which he had been recommended for the award of Veere-Hind and he and S O Abdul Hakim were always singled out for the most difficult patrols

On the night of 3rd Lt. Ganga Singh with about 45 men attacked and drove away a much superior force of the enemy

(c) Not a single person ever showed cowardice in the face of the enemy. Our positions were attacked by very superior numbers, but not a single person ever left his post. We, with small units, attacked the enemy much superior in numbers and in armaments, but not a single soldier ever wavered. There were no desertions from a unit as long as the unit was in contact with the enemy. On the contrary when in contact with the enemy the units fought with unrivalled determination and utmost bravery. Lt Inuzuka the Hikari Kikan Liaison Officer was so impressed by the brave fight put up by these officers and men that he told me that that was the biggest battle ever fought by the I.N.A. against such overwhelming numbers of the enemy. He felt that the manner in which the unit had fought surpassed even the Nippon troops. He conveyed these expressions to H Q 531 unit with a request to pass them on to H E Netaji Subhas Chandra Bose, the Supreme Commander Azad Hind Fauj

After a very careful study of these points and the circumstances under which the unit had fought I am of the opinion that these desertions were mainly due to the following causes

(i) Turkey's alignment alongside the anti axis powers has had a very adverse effect on certain Muslim officers. In spite of our efforts to explain to them the circumstances under which Turkey has been forced to join the War, the officers feel that by fighting against powers that are allied with the Turks they are being disloyal to Islam.

(ii) In the mind of a number of officers and men there is a lack of faith in our final Victory. They are in their own minds convinced that the Anglo Americans are going to win the war and it is futile to carry on the struggle.

- (iii) In this particular operation, after the desertion of Lt. Yasim Khan and his companions, there was a general feeling among the officers and men of the unit that it was useless to continue fighting against the enemy, so superior in numbers and armaments and helped by the traitors, who had gone over to his side. Majority of these officers, under normal circumstances, would never have done anything treacherous, but finding themselves so overwhelmed, they did not have the moral strength to continue the struggle and decided to save themselves by going over to the enemy.

Before I conclude this report, I feel it my duty to pay a tribute to the steadfastness, devotion to duty and bravery of those of the officers and men (although some of them turned traitors afterwards), who fought most courageously and desperately against heavy odds and checked the enemy from penetrating our positions. Thinned in numbers, exhausted by hunger and thirst, weary both in mind and body, these brave soldiers of the A H F. tenaciously hung on to their posts until the arrival of the Nippon force. There were many cases of individuals whose actions deserve merit, these are being investigated and a fuller report will be submitted about them when these investigations have been completed.

(Sd) P K Sahgal, Lt-Col, Commander No 747 Unit, A H F

After writing this report, another important fact has come to light. In majority of the cases, when officers were going over to the enemy, they ordered the N C. Os and men under their commands to move with them under the pretext of either changing their dispositions or of attacking the enemy. Enquiries are being made into such cases and attempts are being made to separate the names of those persons who have gone to the enemy of their own accord and those who have been taken away under false pretences.

(Sd) P K Sahgal, Lt-Col

Exhibit NNN

Secret.

SPECIAL ORDER OF THE DAY. By LIEUT-COLONEL P K SAHGAL, OFFG COMD NO 2 DIV A H F

21 In a Special message addressed to the Commander of No 2 Div A H F His Excellency Netaji Subhas Chandra Bose, the Supreme Commander of the A H F., has called upon all Officers and men of No 2 Div to make every sacrifice and to exert all their efforts to defeat the enemies of India. Sathio, we have the privilege of fighting in the foremost ranks of A H F so it behoves every one of us to be prepared to make the supreme sacrifice to uphold the honour and glory of Free India. Enemies of India have managed to cross over to the left bank of the Irrawaddy and our valiant allies, the Nipponese, are fighting grimly to defeat and annihilate this enemy. Owing to the heavy losses suffered by the enemy, their morale has gone very low. They are entirely depending upon their air support to carry on fighting, but whenever they have been attacked by our forces, they have always fled from the battlefield. In the name of thousands of martyrs who have patiently suffered for the cause of Free India and in the name of the heroes of the A H F who have sacrificed their lives at the altar of India Independence, I call upon all the officers and men of No 2 Div Azad Hind Fauj, to hunt for the enemies of India and destroy them wherever they may be found. Jai Hind

(Sd) P K. Sahgal, Lt.-Col Offg Comd, No. 2 Div. A. H F

PAIGAM KA FORM

A. H. F

DAKHIL
KHARJ

MAJMA ALFAZ
MA

MUHR
TARIKH DAFTAR

HIDAYATEN

6

(IS LAKIR SE UPAR SIRF SIGNALS ISTIMAL KARENGE)

To
BATARF H. Qra. Supreme Command, Rear H. Qra. No 2 Div
6

AZ TARF
From

Adv H Qra. No 2 Div
NO
P S I

LIKHHARI KA NUMBER

TARIKH
Date
16

NUMBER KA JAWAB

Enemy Penetration Reported in the front of No 4 Grla. Regt. () At present no communication with No 4 Grla Regt () 200 fighting soldiers are at present available in Popa. With these soldiers I will occupy strong points in Popoywa Hill and Pagan Kyauk Padaung Road Hospital is being established at Gwogyo

Yih paigam jaise likha gaya har tariqe
se bheja ja sakti hai.
Signed.

To be sent in cipher
(Sd) P K. Sahgal,
Lt Col.

Likhari ka hdayatch
Haruf Indaraj
Immediate

Paigam likhne ka waqt
(P L. W)
1315 hrs.

Signed

(IS LAKIR SE NECHE SIRF SIGNALS ISTIMAL KARENGE)

PAIGAM DENE KA WAQT
(P D W)

Tariqa
Dakhil

Waqt
Dakhil

Bhejne-
wala

Parhne
wala

Tariqa
Kharj

Parhne-
wala

Bhejne-
wala

Paigam Wasuli
ka Waqt
(P W W)

Exhibit 000

Extract from the Diary of Capt P K Sahgal (2/10 Baluch Regt) for the year 1945

Jan. 24 —Went to the range in the morning and fired the new Mortar, it is a very accurate weapon, but the ammunition situation is not very satisfactory Very busy carrying out the re-organisation of the Regt In the evening received orders that 29th has been finally fixed as the date for my move

Jan. 27 —The whole day very busy getting my first Bn. ready to move.

Jan 31 —Issued orders and instructions regarding the move of the Div. from Prome to Kyauk Padaung

Feb 4.—New promotions have been published and there was a ceremony at Netaji's bungalow when Zaman was presented with Major General badges rank. Saw Netaji' for short time about the move of my Regt.

Feb 8 —Got the news that my Role is going to be defence of Popa Hill

Feb 13. Let Rangoon at 0700 hrs by car spent the day at Sako Butay H Q Rest House Had a long discussion with Major-General Iwakuro about the employment of No 2 Div

Feb 17 Arrived at Yenang Yaung early in the morning Recd. reports that enemy had already crossed the Irrawaddy river most serious Met Maj Gen Yamamoto and discussed the situation with his Staff Officers

Feb. 18 —Arrived at Popa early in the morning and met Dhillon who had arrived the previous day Dhillon told me the crossing took place on his right flank where Japanese troops were guarding the crossing He also told me that Capt Hari Ram with a number of Officers and men had gone over One of his Coys and one Pl refused to go over to the enemy Capt Chander Bhan's Bn fought most gallantly and at the end managed to extricate themselves He expected within the next 2/3 days he will be able to gather nearly 500 men This is good news

Feb 19 —Dhillon is very despondent about the condition of the Regt There is no discipline left and the morale is gone They are a source of nuisance to me also because they wander about and give away my positions also

Feb 22 —Col Shah Nawaz and Boobi arrived early this morning Col S N is taking over the tempy command of the Div until Col Aziz gets well. Spent the day explaining the current situation to Col S N Comd in preparing the defences of Popoa came to call on Col S N He seems to be a decent sort

Feb 23 —Climbed by Pt 2640 with Col S N, to explain to him the defences of Popa An order from Saku Army was received to the effect that the I N. A units should carry out Guerrilla activities help the Nippon units attacking the enemy, S N decided to form 4 coys out of No 4 Guerrilla Regt for this job. Went with S N to see Dhillon, who agreed to S N's plan S N. left to report the situation to Netaji

February 24 —Early morning received information that enemy tanks have broken through to Seiktin One Bn of Kanju unit has taken up a defensive position of Kyauk Padaung-Myingyan Road My Regt takes over the responsibility for Popa-Pyinbin Road Sending out a recce patrol to find out the situation on this road I may have to employ one of Dhillon's Coys to carry out guerrilla warfare in Pyinbin area

February 27 —Late last night report came thro' that some enemy had gone to Pozu near Kyauk Padaung and it was confirmed that it was only a fighting patrol supported by tanks and carriers I am convinced that we must attack Meyne

immediately but I have no force available for the task. I requested the Khanjo unit to either take up a defensive position in my area for a day and relieve my forces for an offensive or so lend me a couple of Cos to co-operate with my attack ing units. I hope the Comd will agree with either of the 2 suggestions.

February 28—Information from Nippon source that some enemy lorries have been seen going towards Kyauk Padaung from Pyinbin. I do not consider the Inf trustworthy. Khanjo Butai is going to attack the enemy to-night. I've promised to block the road behind the enemy to cut off his retreat.

March 1—I had to sentence an officer to death this morning for refusing to go to the front. What a pity, it is such a waste of human life. Information received that Majors Riaz, Madan, Sarwar, Dey and Lt. Mohammad Bux who went on an exercise last night have not so far returned. I am terribly worried about them. I do hope that they have not gone over to the enemy.

March 2—Those officers have not returned so far. I am certain they have gone over to the enemy—the treacherous swines. From now on I am going to be absolutely ruthless. I have already replaced one Bn. Comd. I have issued orders that any one making a suspicious movement is to be shot immediately. I wish Shah Nawaz would come back soon and take charge of his Division, then I can devote more attention to my own Regt.

March 3—News from Khanjo Butai that they are going to start an offensive w. e. f. to-night. I have promised to protect their left flank during the attack, but I am very keen that at least some of our own forces should participate in the offensive. I hope the Nippon side will agree to my suggestion.

March 4—Comd. of Khanjo Butai came to have dinner with me while we were having dinner. News came thro. that my patrol had captured 3 cars and put to flight an American patrol who left 3 dead bodies behind.

March 5—Managed to bring back 2 of the Jeep cars and the captured arms and ammunition and one wireless set. About 1200 hrs. got the report that an enemy force about 500 strong with tanks and guns were advancing towards No 1 Bn's position. I rushed to Bn. area where I got the news that the enemy had burned Daungle and was around there. I had 2 platoons out one of which kept on harassing the enemy who moved off towards my right flank. Got the news that the Japanese Bn. on my right had moved forward and that my right flank was in the air. Rushed up one Coy to 4 Guerrilla and 2 platoons of No 1 Inf to fill up the gap. No attack by the enemy.

March 6—A quiet day to-day. The enemy force that came yesterday did not stay to fight. Enemy threat on the Kyauk Padaung Meiktila road getting to be dangerous. Ordered No 4 Guerrilla Regt to take up a defensive position around Kyauk Padaung to meet any enemy advance from Meiktila or Pagan side. Kawabara told me that it was more likely that my Regt would carry out an offensive along the Kyauk Padaung Pagan Road. I hope it will be so because I am confident that my Regt. would give a very good account of themselves in such an action.

March 7—Bulk of my Regt has not so far arrived and as we have to get a Regt ready to undertake the attack by the 10th March against my will. I had to detail No 4 Guerrilla Regt for the attack. In the afternoon received a message that an enemy patrol is in a village 3 m'les from Daungle. I have told Khazim Shah to carry out a raid. I hope it will be successful. Went to look for 2 Division parties found one on the way. Discovered that they had been delayed owing to a heavy air raid.

March 8—One party of the 2nd Division arrived to-day. One S. O. and Scpy

had been killed owing to enemy air raid and two persons had been wounded. In spite of everything, the moral and spirit of the men is very high. Enemy aeroplanes dropped pamphlets specially addressed to the officers and men of my Regt. These pamphlets were signed by Maj Mohammad Sarwar, the dirty swine.

March 11 — 2/Lt Ali Hussain with one S O and two other men went over to the enemy to-day. They tried to take one of my Sepoys with them, but he escaped from them and came back. I have taken into custody all the officers and men whose movements are suspicious. Dhillon has gone into attack to-day. I hope he will do something really good. We need to, to wash off the disgrace that has been caused by these traitors.

March 13.—Dhillon must have gone into attack last night, but no news of the result as yet.

March 14 —News that Pynbin has been re-occupied by the Japanese and others are only about 500 enemy in Taungoon. I must attack them immediately. The enemy, I believe, is on the retreat. Dhillon attacked Taungoon last night, but there was no enemy. I have made up my mind to move out to-night with two companies of Banta Singh's Bn and attack the enemy.

March 15.—Marched off from Popaywa last night at 2300 hrs and arrived in Setsatyo at 0600 hrs to-day. Marching thro' the sand very hard indeed. Bullock carts carrying water could not reach us, nor could my car and the motor cycle. Had to buy water locally. Liaised with the Nippon Coy Comd who did say that he knew everything about the enemy dispositions. Decided to attack to-night with one platoon of the Japanese Co-operating. I had a severe attack of Diarrhoea—feeling very weak.

March 16 —Left Setsatyo at 2130 hrs on the 15th. Arrived Myene at 2330 hrs. Met no enemy on the way. Took up a position at Myene with 2 pls. Attacked from the left flank with one coy. under 2/Lt Jogindar Singh and made a faint from the right flank with one Platoon under Amar Chand. Two sections of the Japanese accompanied J. S and one S C A C J S attacked 4 lines of the enemy trenches, but met no enemy.

March 17 —The Japanese were reluctant to go forward after the first line, but J. S had to beat them to take forward. A C met a small patrol of the enemy who opened fire on him. A C replied by throwing grenades. Casualties enemy about 8 to 10 killed. Our side one killed and one missing. Retired to Setsatyo at night and marched back and arrived Popaywa in the morning of the 17th.

March 19 —News from Dhillon. His fellows are putting up a brave show; they attack a hill 3 times and eventually captured it and killed about 300 enemy, his casualties have been pretty heavy too.

March 20 —Khango unit has been ordered to prepare themselves to go into attack. I have to take over the defence of the whole of Popa and Kyauk Padaung area. Moved Banta Singh's Bn. to cover Kyauk Padaung-Meiktila Road. No definite information about the enemy in Meiktila area. I have ordered B S to send a patrol in that area to find out. Shah Nawaz has told the Japanese that we must be given a share in the offensive. I quite agree with him, but do not think will get a chance to.

March 23 —Last night went to Kyauk Padaung and in the morning went round Banta Singh's position—a hot and tiring business. Japanese patrol returned from Meiktila area. After receipt of the information I am convinced that we should attack Meiktila from our side. Of course we must have more detailed information about the general situation before we can undertake such an attack and must co-ordinate it with the Japanese attacks.

March 26—Our milk goat died in the morning, so from now on we shall be in milkless Coffe. Conference with the Khanjo Comd about the coming operations and sent out patrols to recon the area in which I shall be operating. I do not like the task that has been allotted to Dhillon. Both our resource in the tpt we shall never be able to keep him supplied with water. I suggested to Shah Nawaz that he should be withdrawn from that area.

March 27—I have been reading Stonewall Jackson, there is little doubt that he was a great General. Still he is so little heard of. I put up my plan to Shah Nawaz and he has approved of it. It is a simple one. I am going to put a Bn astride and in the high ground in the right of Sektien Welong Road and basing one Bn N W of Perkuen. Carry out harassing attacks against enemy in Pynbin from Tada area.

March 28—The Nippon Haidan which was expected to be in Sektien area has not arrived so far. So my plan of action is I think, a very sound one. Elaborated it and issued orders. One to be due to move to-night. Shah Nawaz sent for me at about 19-30 hrs. he is very worried because he has no reserve at hand in case the enemy counter attacks along Pynbin-Ovin Road. I do not think it is likely. I consider an enemy counter-stroke from Welong side more likely still S N persisted, so I had to alter my plans. I will put only one Coy to defend Welong-Sektien Road and leave the remainder of the Bn. Popaya area until the arrival of Dhillon's Comd. when I may expect them to join me.

Exhibit PPP

Security

No 7/21/Ms

H. Qrs Supreme Command, A. H. F. Burma, 26th March 1944.
All Formations and Units.

Subject —PERSONAL NUMBERS-OFFICERS

Personal numbers to officers have been allotted according to the attached list. These numbers have been allotted alphabetically in each rank and not according to seniority. In future whenever an individual is appointed a S O or a 2/Lieut. he shall be allotted a number by the Military Secretary. These numbers shall invariably be quoted in all correspondence. If any officer of the A H F has not been allotted a number in this list the matter shall immediately be brought to the notice of the Military Secretary. Comds. of units and formations etc., and officers-in-charge records are responsible to ensure that these numbers are entered in the records of individual officer.

(Sd.) P K. SAHGAL Major Military Secretary

Allotment of personal numbers-officers

Personal No allotted	Rank	Name	I. N. A. Unit	I. A. Unit
A. H. F. 22	Lt. Col.	Shah Nawaz Khan	H. Q. 1 Grla Regiment	1/14 P R
" 38	Major	Gurbaksh Singh Dhillon	H. Q. 5 Grla Regiment	,
" 84	,	P K Sahgal	H. Q. S. C.	2/10 Baluch. Regiment

Exhibit QQQ

No A/19118

No 125 Unit A H F Burma, 22nd December 43

To Liaison Officer, Hikari Kikan Myingyan.

Subject .—War Prisoners-Possessions of

Reference :—Two British officers who were taken prisoners by A. H F

Along with the two Ps O W one revolver with its case was also taken from my N C Os by the Japanese soldier As the British officers were made prisoners by the A H F please arrange to collect the revolver and return to these Head Quarters Maps and other articles may be kept by the Japanese as they may need it for examination With thanks

22-12-04

(Sd) G S Major, Commander No 125 Unit.

Exhibit RRR

Security

No 6/5/G No 501 Unit, A H. F.

Immediate.

Burma, dated 2nd March 1945.

All Units and Formations.

Subject —Secrecy and Security.

The code numbers allotted to units have been changed to read as under and will be taken into use forthwith .—

NO 2 DIVISION

Adv Div H. Qrs	501	Main Div H Qrs	502
H Qrs No 1 Inf Regt	510	1/1 Inf Regt.	511
2/1 Inf Regt	512	3/1 „ „	513
H Qrs. No 2 Inf Regt	515	1/2 „ „	516
2/1 Inf Regt	517	3/2 „ „	518
H Qrs No. 4 Grla Regt	420	1/4 Grla „	521
2/4 Grla. Regt	422	3/4 „ „	523
No 1 Anti-Tank Coy	527	No 2 Div Signals	529
No 2 A B O D	530	No 2 F P S C	531
No 2 M E S	532	PT Amn Dump	533
No 2 Workshop	534	No 2 S I S	535
P O L Section	536	Medical Aid Party	338
No 4 Engineer Coy	352	Dett M P	325

(Sd) G S. DHILLON, Major 'G'

Copy to No 60 Unit, A H F , for information

Exhibit SSS

Secret Immediate

No 6/6/G No 251 Unit A. H F

Burma, dated 2nd March 1945

To All Formation/Units

Subject —Pass Word

Commencing from to-day all formations and units in POPA HILL area will use the following Pass Word for the purpose of security.

‘ Rangoon Mandalay ’ (Sd) G S. DHILLON, Major ‘ C ’

Most Secret.

Exhibit TTT

Intelligence Summary No. 3

501 Unit, dated 3rd March 1945

Reference. Map Sheet No 840, 84K and 84P Scale 1 4 miles or
1-2 50 000

28th February 1945 — Enemy was reported to be advancing towards Kvauk Padaung by Pynbin-Letpanbin Road. An attack was put up by certain Japanese units but it was found out afterwards that there was no enemy. Undermentioned officers with their batmen went on exercise with all Div Ancillary Units. Units came back safely with the officers and their batmen did not. It appears that either they have been captured or have gone over to the enemy side — Major Mohammad Riaz Khan, Major P J Madan, Major S N Day, Major Mohammad Sarwar and Lt. Mohammad Bakhsh.

1st March 1945 — Nothing much happened during these days. Patrol activity from our side continued. Enemy tried to encircle the Guerilla party in the vicinity of Tibu but failed. Our Patrols went up to Sekten and Welaung and got information that enemy has gone towards Taungtha. The enemy strength was 12 tanks and five hundred lorries. No enemy could be seen on the roads between Taungtha, Welaung and Sekten. Neither a Telephone line. Most of the civilians are pro-Americans as they are given rice, milk, cigarettes, P T Shoes and clothes by the enemy OYE parties had to pretend that they were on the American side in order to get information from the civilians. It was also found out that the enemy is strong in medium and light ranks as well as carriers.

Following forms the enemy —

Americans — Not much. Indian, Gurkhas, Negroes, Chinese and Kochins.

One of our parties was very heavily bombed at a place about six miles from Popa in the Northerly direction. Our losses were the following —

Rifles	6	Equipment	8
Bayonets	6	Rounds 303 " ball 500	
Grenades	2	Blankets	9
Ration Tins	11	Pay books	8
Ground Sheets	11		

Only one man was slightly wounded.

3rd March 1945 — Reference — Intelligence Summary No. 1 of 25th February 1945.

The enemy which had gone from Pynbin towards East and Taungtha has now been reported to have gone partly to putting up an offensive from Myingyan towards south from Meikula, towards Taungtha from Popa towards Pynbin while A. H. F. Troops are going to attack from Kyauk Padaung towards Nyaungu.

Dated 3rd March 1945

(Sd) G S DHILLON, Major 'C'

Distribution — No 60 Unit No 502 Unit No 510 Unit

No 515 Unit No 420 Unit (2 copies 1 for each base)

Hikari Kikan, War Diary (2 copies) File (2 copies)

Most Secret.

Exhibit UUU

Intelligence Summary No. 4

No 501 Unit A. H. F., dated 4th March 1945

Reference—Map Sheet No 84O, 84K and 84P Scale 1" 4 miles or 1" 250000

3rd March 1945—Enemy about 300 strong, Nationality Indian, was located digging near Kaungnyo On Kyauk Padaung-Nyaungu Road, four carriers were seen 13 miles from Kyauk Padaung Later on towards the evening at about 2000 hrs. some enemy estimated about 500 was also found about eight miles from Kyauk Padaung on the same road

A recce patrol of the enemy came about two miles from Pozu at 1800 hrs. They were fired at by a Japanese post thus making them run away. It has been found that the villagers roundabout Taung Zin area give information to both sides. They have told the enemy that Azad Hind Fauj is located in most of those villages. The result is that the enemy is very cautious. The enemy tactics are very much dependent on tanks, armoured cars and carriers. Usually they do not send out a party less than about a hundred. The vehicles carrying these parties are escorted in front and in the rear by A F Vs on reaching a place where they need stopping they fix their M Gs and Mortars before debussing the troops

Dated 4th March 1945

(Sd) G S. DHILLON, Major 'C'

Distribution.—No. 60 Unit, A. H. F. No. 510

No. 420, No. 502, No. 515, Hikari Kikan, War Diary (2 copies), File (2 copies).

(2 copies, one for each base)

Exhibit VVV.

Most Secret Copy No. 3.

No. 501 Unit A.H.F. Operation Order No. 2.

Ref—Map sheets K P O L I.—4 Miles, 1"=250,000

1. *Information*—Enemy. On 5th the enemy patrol composed of 4 tanks and about 500 infantry were seen operating in the area Daungle on Popaywa-Pyinbin Road and after making contact with patrol of 515 unit the enemy is reported to have withdrawn back from that area. No enemy reported on Popaywa-Taungtha Road On Kyauk Padaung-Taungozin road at a distance of 9 miles from Kyauk Padaung 200 enemy infantry with 7 lorries and 3 carriers are reported to be digging in. This enemy mainly consisted of Americans and Indians On Kyauk Padaung-Meiktila Road small forces of enemy supported by tanks have been reported near Taungywa.

Own troops—Kaungjo Unit of Nippon Army is attacking the enemy along the Popaywa Taungtha Road and Popaywa-Pyinbin Road One Company of Japanese Engineers in the area Nyaungan on Kyauk Padaung-Meiktila Road Dispositions of 515 and 420 Units is as before

2 *Intention*—Units under command of 501 unit will—

1 Occupy defensive positions round Popa Hill Kyauk Padaung and Nyaungan area and stop and annihilate any enemy approaching these defences 2 Keep Popaywa-Yenangaung Road clear 3 Co-operate with the attacking Nippon units to annihilate the enemy which has crossed over the East of Irrawaddy

3 *Method*—No 420 unit will undertake the defence of Kyauk Padaung and Nyaungan areas Commander 420 unit will liaise with Commander Nippon Engineering unit in Nyaungan area to get detailed information about the defensive positions in that area Commander 420 unit will occupy these positions in sufficient strength to check any enemy advance in the direction and with the remainder of his forces he will undertake active Guerilla operations on Kyauk Padaung-Meiktila

and Kyauk Padaung Taunglin Road. All units of 420 unit in Popa area will move to their new positions on the night of 6th-7th March 1945. No 515 unit with two platoons of 510 unit under command will undertake the defence of Popa. He will also carry out active patrolling in front of his defensive positions.

Anti-Tank defence.—Commanders 420 and 515 units will arrange to erect anti-tank obstacles and lay anti-tank mines at suitable points. No 352 unit under directions of D.A.G. 501 unit will undertake all duties in the camp area and will form a general reserve in the hand of Commander 501 unit.

4. **Administration.**—‘Q’ 501 unit will arrange to provide transport for the move of 420 unit so that the move will be completed on the night of 6th-7th March 1945. He will also make arrangements to issue extra rations to make up the scale of Dhall 100 grammes and Oil 20 grammes per day.

5. **Communication.**—Commander 529 unit will arrange to send a D-R to 420 unit every night starting Popaya at 2100 hrs. will effect from 7th March 1945. He will also arrange to get a motor cycle, put into working order and attach it with 420 unit for duty.

6. Acknowledge.

Dated 6th March 1945 Time—1500 hrs

(Sd) G.S. DHILLON, Major ‘G’

Exhibit GG

No 107/1/U/ G Office of the D M B I I L, Syonan, dated 3rd April 1943
Officer Commanding, Reinforcement Group,
Headquarters I N A. Bidadari.

Subject—Reorganization Reinforcement Group.

Ref—Your No R/9/9 dated 1st April 1943

The procedure outlined in your above-quoted letter will be followed as far as possible. Exceptions of course will have to be made in such cases as men for Bahadur and ‘Intelligence Groups’.

(Sd.) Shah Nawaz Khan Lt.-Col

C. G S., Office of the D M B. I I L.

Copy to—Headquarters, I N A, for information

Exhibit KKK

Security
All Unit/Formations

No 6/8/G No 501 Unit, A. H F
Burma, dated 6th March 1945.

Subject—SAFETY AND SECURITY

It has been noticed that many new footpaths have been made in the camp. As the enemy is superior in air these paths give out exact positions of our location. Unit commanders and officers must always keep their men warned against this danger. Still, sentries are found at night challenging very loudly or making enquiries from approachers in a very loud tone. An enemy spy near about can get much information which may cause us many lives and apart from that give enemy a tactical advantage. May unit commanders please take steps to check and rectify this common mistake.

Copy to Hikari Kikan.

(Sd) G S DHILLON, Major ‘C’

Distribution.

Copy No 1 Copy No. 2 Copy No. 3 Copy No 4 Copy No 5 Copy No. 6 Copy No. 7 and 8 Copy No. 9 and 10
No 510 unit. No. 515 unit. No. 420 unit Hikari Kikan. D. A G. D Q M C. War-Diary Office copy.

Jai Hind I hope most of your queries have been answered in this order, others I will answer when I come to-morrow. I ought to have to-day, but last night I went to check certain defences and on my arrival back I felt very weak, so weak as I have never felt before throughout my life Major Shanker gave me an injection to-day, though to complete the course I must get 12 yet, there are no more available except a few I will get one to-morrow. I have also to hand over this 'G' work. I am sending Mohindar Singh to you to make necessary arrangements for the reception of and dispositions of 421 and 423 units Ala haise with Maj Wats Nathe at Nyaunggan, and see that units are placed and to deal with the enemy effectively. I will come to-morrow without fail

Yours (Sd.) G S DHILLON

Exhibit WWW
Unit No. 422

Crime Report

Charge against No 42570 Sepoy Duli Chand, No 42440 Sepoy Hari Singh, No 42537 Sepoy Daryao Singh, No. 41961
Dharam Singh

I A F D 901.
No. 41961

Place Date of offence Offence

Name of witness.	Punishment awarded.	By whom awarded and date
Burma 28th February 1945	(1) I N A. Act Sec 35 DESERPTION In that they W. O A S deserted from the front line on 28th February 1945 at 2230 hrs until apprehended by a unit patrol sent for the purpose at 1200 hrs on 2nd March 1945 (2) I. N A Act Sec 29 (C) Directly or Indirectly holding correspondence with the enemy. In that they, W O A S, attempted to communicate with the enemy on 28th February 1945, vide Exhibit (a) attached	Sentenced to death Under the authority of Supreme Comdr A H F letter, dated 21st February 1945, to No 2 Inf Regt and No 4 Crle Regt

Recommended for Divisional Comd's trial
(Sd) G S DHILLON

Documentary

Sentenced to death Under the authority of Supreme Comdr A H F letter, dated 21st February 1945, to No 2 Inf Regt and No 4 Crle Regt Dated 6th March 1945.

Service — Years 3.
Date of last record entry — Nil.
General Character — Bad.

One copy forwarded to No. 501 unit on 8th March 1945 (Sd) G S DHILLON, Major
Adj

Comdr Unit No 420,
Signature of O. C Burma, dated 6th March 1945

and A' point, i.e., point 'B'. He was also engaged and the enemy was held up. At about 12-30 hours 15 enemy tanks, 11 armoured cars and ten trucks came advancing by the main road, and started shelling and firing at point 'A'. Our men replied this fire with rifle and a Bren gun. The enemy column changed its direction towards B Coy and directed itself into two halves. One went towards 'B' Coy and the other towards 'A' Coy. B Coy was given warning by the Bn Headquarters through a runner. Soon the Coy gained contact as the enemy A.F.Vs. came right into the Coy locality and wanted to crush our men in the trenches. They started shelling and throwing hand grenades into the trenches from inside their vehicles. The Coy felt helpless against the superiorly equipped enemy. Two mines which were with the Coy were used but unluckily both went missed. Nos. 5 and 6 platoons got out of the trenches and with bayonets fixed charged on to the A.F.Vs. with shouting slogans of NETA JI KI JAI ! INQILAB ZINDABAD ! and CHALO DELHI. The A.F.Vs. came to a standstill, enemy jumped out of them and the trucks and a hand-to-hand fighting began, which lasted for over one hour. 2/Lt. Gian Singh Coy Comdr amidst men was charging and inspiring them. No. 5 platoon Commander his 2/Lt. Mangu Ram was killed and only about one-tenth of the two platoons were left when 2/Lt. Gian Singh called for No. 4 Platoon Commander 2/Lt. Ram Singh and was issuing orders for a withdrawal from a standing position, when a bullet hit him in the head and he fell down. His death caused a little bit disturbance but 2/Lt. Ram Singh got hold of the situation by withdrawing the remnants of the Coy to a rear position. At the same time the enemy also got into their vehicles after collecting weapons of the dead and withdrew. This engagement lasted from 1400 hours to 1600 hours approximately. The enemy lost about 30 killed and many wounded. We lost about 40 killed. Some of the seriously wounded—about ten—were captured by the enemy and taken back. The enemy which had come towards 'A' Coy side started first by shelling the village and then approached the Coy position. The A.F.Vs. entered the village. Enemy automatic from the ground also opened fire. Fire was also opened from our Coy. At about 1800 hrs. the enemy charged with bayonets and tommy guns. The Japanese set the village on fire thus making it a tank obstacle. The tanks could not approach and the enemy had to withdraw leaving back three dead. A Coy also lost three killed. Towards the dark Taungzin was still in our hands and the enemy withdrew. B' unit 551 then came back to a position near Kwebyok for reorganization. Only following articles were captured from the enemy:

Mag Bren Gun 3 Hands Grenades 8 Amm 303 Rds. 100 Boot ankle
Prs. 3 Trousers Prs 3 Pay book 3 1 (attd herewith)

Note.—One L. M. G., one Tommy Gun and a Rifle fell to Japanese lot. Our losses were —

Killed In Action

2/Lt. Gian Singh }
Mangu Ram }

Regarding these two officers, I strongly recommend for a posthumous reward and decorations. Their bravery is unparalleled in the history of War. Attacking of tanks and A.F.Vs. may seem impossible, had these heroes preferred to die fighting than to handup or show their backs.

Other ranks killed

Number about 50 A separate list is being submitted Wounded in action

and thus captured about ten wounded brought back six. The arms of our killed could not be collected as the enemy collected it and took back.

(Sd.) G. S. Dhillon, Maj Comdr, No 450 Unit.

Encls —One Pay Book. One Sketch

Exhibit AAAA

Beloved Netaji, Jai Hind

Burma, 20th March 1945

I have received your letter of 12th March 1945. Not words, only tears could express my feelings. I thank you with all my heart for expressing your complete confidence in me and in those who are with me. I assure you, our Netaji, on behalf of the Regiment that does not matter what may come our way, we will continue the struggle according to your ideals, and wishes to earn our Motherland's Freedom as long as a single soldier of this Regiment is alive. As for myself, my last words to you at Rangoon, "Main ap ki ankhen kisi ke samne nichi na hone dunga," have been ringing in my ears ever since I left you, and specially so after I have come back from Nyaungu. I fully realize that in spite of reasons which may be produced I have not only failed to do what I voluntarily promised, but have been the only Regimental Commander to bring humiliation to you and to the Azad Hind Fauj. I have no face to promise again, only my actions will do so. Your letter has put a new spirit into us. All the officers and men present here, and I humbly and with warmest hearts have accepted your greetings. We are confident that with God's grace and your blessings it will not be difficult to achieve success. We all pray for your long life and health to guide us through this Holy War. Jai Hind.

Your Excellency's Obediently (Sd) G S Dhillon

Exhibit BBBB

Secret

Unit No 450

BATTLE REPORT No 5

Burma, dated 25th March 1945.

Since the submission of the last report No 4 of 18th March '05 nothing of importance has happened, though the patrol activities on both sides have been on the increase. Some of the points noticed are reported below for the sake of interest and training —

1. During these days we have been sharing the occupation of most of the places in our area with the enemy. We would occupy during the night and they during the day as if a definite settlement existed between the two. 2. Many a place we have attacked during the night only to find that there was no enemy. 3. Many a time our patrols were seen by the enemy patrols or *vice versa* and firing started on both sides mostly from long ranges. One day, i.e., 29th March 05 at about 1600 hrs an enemy patrol about fifty strong came in front of the dispositions of "A" Coy 452 unit. Timely warning was given by the forward listening posts and our Coy Comdr Lt Ram Nath sent forward two platoons to encircle this enemy. Before this could be done the enemy started running back. Our men ran after him for about two miles as if chasing a game during peace time. The Coy and Pl Comdrs tried their best to collect the two platoons, but men would not listen. Most of these men were civilian recruits from Malaya. The enemy was firing back at our men, but our men would not take to the ground instead they said "Oe, bat to sun jao". It was after about two hours that our Commanders could collect all the men. When told that you should not do like this and must make use of the ground, our men said, "Sahib ham kia karen, dushman to rukta hi nahin hai, bhage chala jata hai". This story shows a grand spirit, but poor training. 4. It was learnt from the Japanese

M Pr that the villagers' roundabout Pongobin informed that on the days following our attacks on Hill 1860 the enemy took back 3 full lorry loads of the dead. Of course wounded must be more. 5 It has also been learnt that the enemy troops take away women from the nearby villages West of Jaungn Hills by force, keep them for a day or so and then send them back. Rape cases being so frequent that the villagers are getting anti British. This is another point where the enemy cannot defeat us for he may give them food stuffs, but honour cannot be compensated by anything and the Burmese people are very touchy as far as self respect is concerned. 6 On 21st March 05 Our positions of Unit No. 453 were disclosed to the enemy by a Burmese spy, and thus were heavily shelled, bombed, mortar fired and machine gunned, for about four hours during the afternoon. The result was one man L/Nail Sudarshan was so highly wounded that even his evacuation was not necessary. This is a proof of taking to the cover. 7 Pooling the necessity of more training, it is being arranged by these H. Qrs. to issue 'Training Notes During War' upto platoons within this unit. A copy of Note No 1 is attached herewith. As a result of this race, we got three 2 Mortar, bombs and one rifle magazine with nine rounds which the enemy had to leave back to lighten the load or due to nervousness.

(Sd.) G S., Major, Commander No 450 Unit, A H F

Distribution. 531 Unit (2) (n) to each Bn. War diary (1) Office copy (1)

Exhibit CCCC

Unit No 170

Most Secret

OPERATION ORDER No. 2

Copy No. 3

Ref—Verbal orders issued on 24th February 1945 Map Sheet No K. P O 2. 1° 1' 125,000

1 Information —(a) Enemy —Enemy Infantry and armoured troops have captured Pinyinbin and elements of the same have been reported in Seiktein and Jogy and Kyauk Padaung Myingyan road. But this report is not confirmed. (b) Own Troops —One Bn of the Khajo Botai has taken up position on Kyauk Padaung Myingyan Road in Gyangywa. One Bn of the same unit is going to take up the defence of Kyauk Padaung. Unit No 205 A H F is preparing Popa defences and strengthening up the same, apart from patrol activities in its front and flanks.

2 Intention —No 170 unit will carry out intensive guerilla warfare and patrolling against the enemy in the areas marked in the attached map

3 Method —(a) No 2 Bn. with Kyauk Padaung as base will operate in No 1 area and will also send a fighting patrol along the route marked on the Map to find out the type, location and activities of enemy. The patrol on finding out will report straight back to No 251 unit. (b) No 1 Bn will form a Guerilla Company. No 3 Bn will also form a Guerilla Company. These Companies with Popa as base will operate in areas 2 and 3. (c) Regimental Headquarters and rest of the un equipped strength of 1 and 3 Bns will also move to Popa and will help in preparation of defences there.

4 Administration —Seven days ration will be taken by the outgoing parties. Each Guerilla party will be accompanied by orderlies, who will carry with them necessary medicine. A Q M will have hundred grenades from 265 unit Rs 1,000 will be taken by each party for purchase of fresh rations or to meet any unforeseen necessities, and issue fifty each to No 1 to 3 Bns

5 *Inter-communication* — Under all circumstances during the absence from parties will send back necessary information at least once a day or more, if needed

(Sd) G S DHILLON, Major, Commander 170 Unit.

Distribution

One copy to each Bn 173 Unit, One copy to unit No 251,

One office copy

Exhibit DDDD

No D 5, dated 2nd April 1945.

To COLO NEL SHAH NAWAZ KHAN

From LT -COL G S DHILLON

Captain Mohammed Husain's absence has not affected the spirit or morale of the troops at all. We are prepared to continue fighting in the front line. No need of rest unless objective is achieved. We will sacrifice our lives to maintain the honour of Azad Hind Fauj. Water or no water, rations or no rations will not affect our fighting capacity. Captain Chander Bhan, Lieut Khan Mohammed and Lieut Kartar Singh along with my staff join me in assuring you that we will fight up to the last. Jai Hind

(Sd) G S DHILLON, Lt -Colonel,

Commander, 450 Unit, A H F

Time 2105 hours

BUREAU ORDERS

By

Lieut -Col J K Bhonsle, Director of Military Bureau, I I L

Syonan To Number of the year Dated 14th May 2603

With effect from the date of receipt of this order the number of the year will be in accordance with the Nippon Calendar, that is, 1943 will be shown as 2603 and so on

In future the Nippon Year will be shown on all official correspondence and documents

C J S TRACEY, Lieut -Col, Chief Administrator, D M B I I L

Exhibit EEEE

INDIAN NATIONAL ARMY ADMINISTRATIVE INSTRUCTIONS

by

Executive Committee, Indian National Army

Saturday

Syonan-To Appointments 20th February 1943.

4 Appointments as per attached list have been made subject to the approval of the President. Council of Action

Committee.

Annexure to O N A. Administration No 4
Dated 21st February, 1943
DIRECTOR OF MILITARY DEPARTMENT.
LT COL S K. BHONSLE
A. D C
LT MIRZA INAYAT ALI

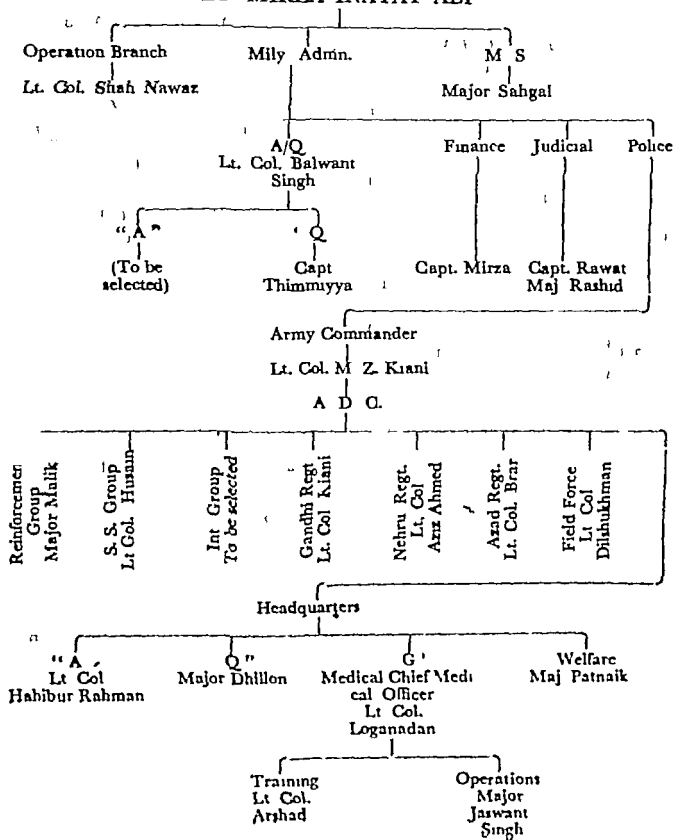


Exhibit LLLL
Ministers of the Provisional Government of Azad Hind (21st Oct 1943)

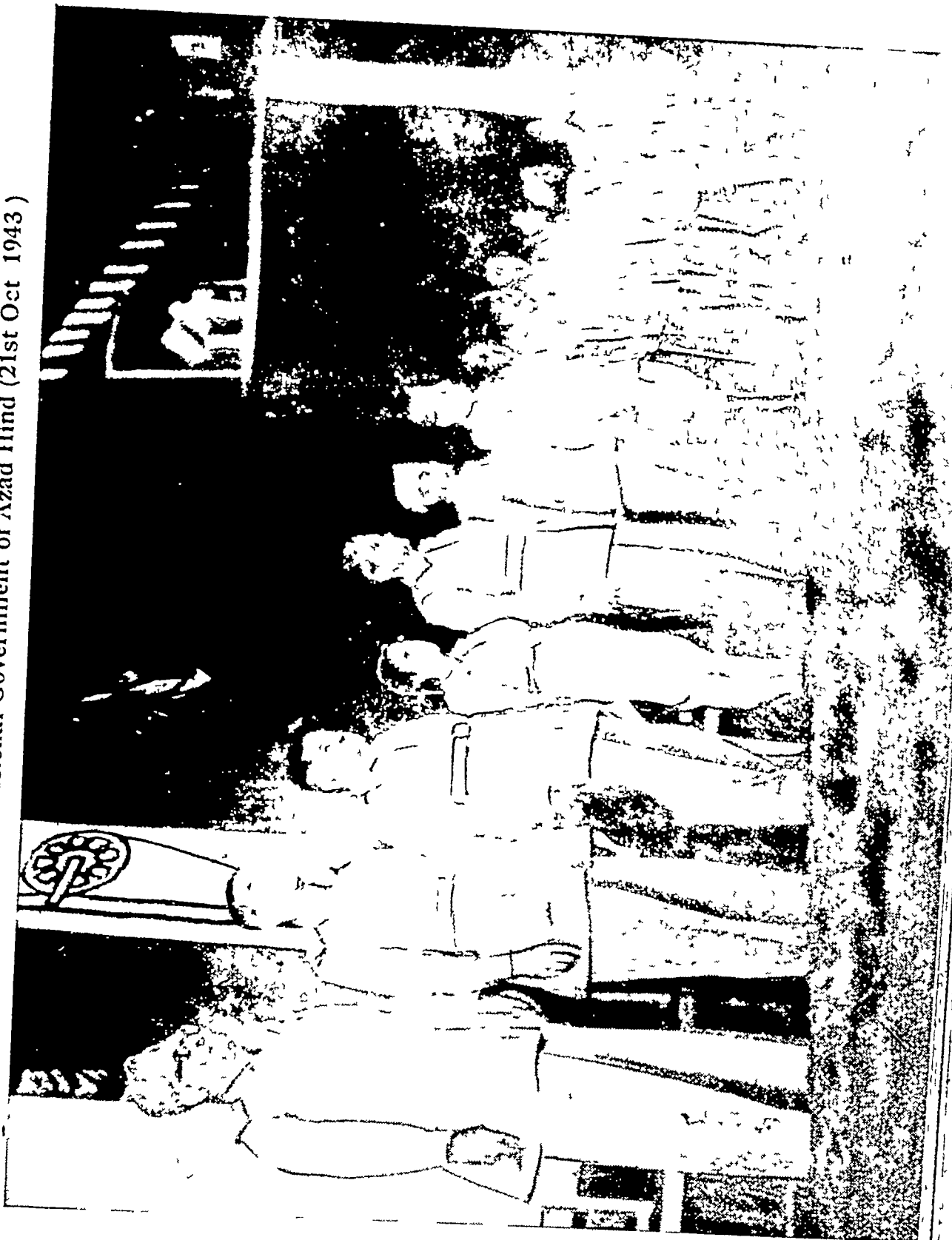
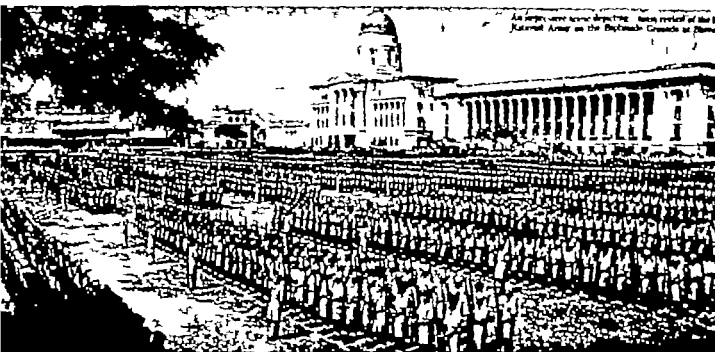


Exhibit MMMM
Subhas Bose at a mass rally



An aerial view of the mass rally of the
National Army on the Baymeach Grounds at Ranchi.

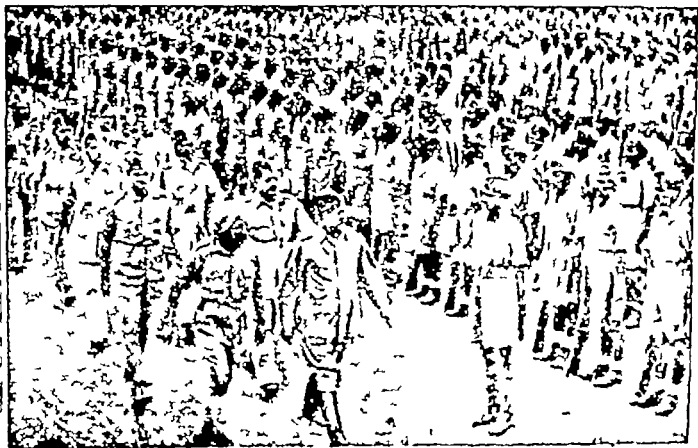


Exhibit FFFP

Defence Documents Proclamation of the Provisional Government of
Azad Hind

"After their first defeat at the hands of the British units 1757 in Bengal, the Indian people fought an uninterrupted series of hard and bitter battles over a stretch of one hundred years. The history of this period teems with examples of unparalleled heroism and self-sacrifice. And, in the pages of that history, the names of Sirajuddaulah and Mohan Lal of Bengal, Haider Ali, Tippu Sultan and Velu Tambo of South India, Appa Sahib Bhonsle & Peshwa Baji Rao of Maharashtra, the Berars of Oudh, Sardar Shivam Singh Atarwala of Punjab and last, but not least, Ravi Laxmibai of Jhansi, Tantia Topi, Maharaj Kunwar Singh of Dumraon and Nana Sahib—among other, the names of these warriors are for ever engraved in letters of gold. Unfortunately for us our forefathers did not at first realise that British constituted a grave threat to the whole of India and they did not therefore put up a united front against the enemy. Ultimately, when the Indian people were roused to the reality of the situation, they made a concerted move—and under the flag of Bahadur Shah, in 1857 they fought their last war as free men. In spite of a series of brilliant victories in the early stages of this war, ill-luck and faulty leadership gradually brought about their final collapse and subjugation. Nevertheless such heroes as the Rani of Jhansi, Tantia Topi, Kunwar Singh & Nana Sahib live like eternal stars in the nation's memory to inspire us to greater deeds of sacrifice and valour.

Forcibly disarmed by the British after 1857 and subjected to terror and brutality, the Indian people lay prostrate for a while but with the birth of Indian National Congress in 1885, there came a new awakening. From 1885 till the end of the last world war, the Indian people in their endeavour to recover their lost liberty, tried all possible methods, namely, agitation and propaganda, boycott of British goods, terrorism and sabotage—and finally armed revolutions. But all these efforts failed for a time. Ultimately, in 1920, when the Indian people, haunted by a sense of failure, were groping for a new method, Mahatma Gandhi came forward with the new weapon of non-co-operation and civil disobedience.

For two decades thereafter, the Indian people went through a phase of intense patriotic activity. The message of freedom was carried to every Indian home. Through personal example, people were taught to suffer, to sacrifice and to die in the cause of freedom. From the centre to the remotest villages the people were knit together into one political organisation. Thus, the Indian people not only recovered their political consciousness, but became a political entity once again. They could now speak with one voice and strive with one will for one common goal. From 1937 to 1939, through the work of the Congress Ministries in eight Provinces, they gave proof of their readiness and their capacity to administer their own affairs.

Thus, on the eve of the present world war, the stage was set for the final struggle for India's liberation. During the course of this war, Germany, with the help of her allies, has dealt shattering blows to our enemy in Europe, while Nippon, with the help of her allies, has inflicted a knockout blow to our enemy in East Asia. Favoured by a most happy combinations of circumstances, the Indian people today have a wonderful opportunity for achieving their national emancipation.

For the first time in recent history, Indians abroad have also been politically roused and united in one organisation. They are not only thinking and feeling in tune with their countrymen at home, but are also marching in step with them, along the path to freedom. In East Asia, in particular, over two million Indians are now organised as one solid phalanx, inspired by the slogan of "Total Mobilisation."

and in front of them stand the serried ranks of India's Army of Liberation, with the slogan "Onward to Delhi" on their lips

"Having goaded Indians to desperation by its hypocrisy and having driven them to starvation and death by plunder and loot, British rule in India has forfeited the goodwill of the Indian people altogether and is now living a precarious existence. It needs but a flame to destroy the last vestige of that unhappy rule. To light that flame is the task of India's Army of Liberation. Assured of the enthusiastic support of the civil population at home and also of a large section of Britain's Indian Army and backed by gallant and invincible allies abroad but relying in the first instance on its own strength, India's Army of Liberation is confident of fulfilling its historic role.

Now that the dawn of freedom is at hand, it is the duty of the Indian people to set up a Provisional Government of their own, and launch the last struggle under the banner of the Government. But with all the Indian leaders in prison and the people at home totally disarmed, it is not possible to set up a Provisional Government within India or to launch armed struggle under the aegis of that Government. It is therefore the duty of the Indian Independence League in East Asia, supported by all patriotic Indians at home and abroad to undertake this task—the task of setting up a Provisional Government of Azad Hind (Free India) and of conducting the last fight for freedom, with the help of the Army of Liberation (that is, the Azad Hind Fauj or the Indian National Army) organised by the League.

Having been constituted as the Provisional Government of Azad Hind by the Indian Independence League in East Asia, we enter upon our duties with a full sense of the responsibility that has devolved on us. We pray that Providence may bless our work and our struggle for the emancipation of our Motherland. And we hereby pledge our lives and the lives of our comrades in arms to the cause of her freedom, of her welfare and her exultation among the nations of the world.

It will be the task of the Provisional Government to launch and to conduct the struggle that will bring about the expulsion of the British and of their allies from the soil of India. It will then be the task of the Provisional Government to bring about the establishment of permanent National Government of Azad Hind constituted in accordance with the will of the Indian people and enjoying their confidence. After the British and their allies are overthrown and until a permanent National Government of Azad Hind is set up on Indian soil the Provisional Government will administer the affairs of the country in trust for the Indian people.

The Provisional Government is entitled to and hereby claims the allegiance of every Indian. It guarantees religious liberty as well as equal rights and equal opportunities to all its citizens. It declares its firm resolve to pursue the happiness and prosperity of the whole nation and of all its parts cherishing all the children of the nation equally and transcending all the differences cunningly fostered by an alien government in the past.

In the name of God in the name of bygone generations who have welded the Indian people into one nation and in the name of the dead heroes who have bequeathed to us a tradition of heroism and self sacrifice, we call upon the Indian people to rally round our banner and to strike for India's Freedom. We call upon them to launch the final struggle against the British and all their allies in India and to prosecute that struggle with valour and perseverance and with full faith in final Victory—until the enemy is expelled from Indian soil and the Indian people are once again a Free Nation. Signed on behalf of the Provisional Government of Azad Hind Subhas Chandra Bose (Head of the State Prime Minister and Minister for War and Foreign Affairs) Capt. Mrs. Lakshmi

(Women's organisation), S. A. Ayar (Publicity and Propaganda); Lt-Col A. C. Chatterjee (Finance); Lt-Col Aziz Ahmed, Lt-Col. N S Bhagat, Lt-Col J. K. Bhonsle, Lt-Col Gulzara Singh, Lt. Col H Z Kiani, Lt-Col A D Loganadan, Lt-Col Ehsan Qadir-Lt-Col Shah Nawaz (Representatives of the armed forces); A M Sahay, Secretary (with ministerial rank); Rash Behari Bose (Supreme Adviser), Karim Gani, Debnath Das, D M Khan, A. Yellappa, J. Thivy, Sardar Ishai Singh (Adviser), A N Sarkar (Legal Adviser), Syonan, October 21, 1943

EXHIBIT HHHH

STATEMENT ON THE PROCLAMATION

As a student of history and in particular of revolutions in different parts of the world, during 22 years of public life, I always felt that what India was lacking in her fight for freedom were two things—a National Army and a National Government to lead that army to battle. In the course of present war, thanks to the brilliant victories achieved by the armed forces of Nippon, it became possible for Indians in East Asia to organise the Indian Independence League and the Indian National Army.

The creation of a National Army gave reality and seriousness to the whole Independence Movement in East Asia. If this Army had not been organised, the Independence League in East Asia would have been mere propaganda organ. With the creation of the National Army, it became possible, as well as necessary, to set up a Provisional Government of Azad Hind (Free India). The Government is born out of the Independence League for the purpose of launching and directing the final struggle for India's freedom.

In setting up this Provisional Government we are, on the one hand, meeting the exigencies of the Indian situation and are, on the other, following in the footsteps of history. In recent times the Irish people set up their Provisional Government in 1916. The Czechs did the same during the last world war. And, after the last world war the Turks under the Leadership of Mustapha Kemal, set up their Provisional Government in Anatolia. In our case, the Provisional Government of Azad Hind will not be like a normal peacetime Government. Its functions and its composition will be of a unique kind. It will be a fighting organization, the main object of which will be to launch and conduct the last war against the British and their allies in India. Consequently, only such departments will be run by the Government as will be necessary for the launching and the prosecution of the struggle for Liberty.

The Cabinet will consist of a certain number who will represent the civil departments of the Government—while there will be others representing the Armed Forces of the Government. Since the purpose of the Government is to fight for Independence, the armed forces have been given a large representation on the Cabinet. Besides the ordinary Ministers of the Cabinet, provision has been made for a number of Advisers to the Cabinet. In this manner, the Provisional Government will maintain close and organic connection with the entire Indian community in East Asia and mobilise all their resources for the coming struggle. When the Provisional Government is transferred to Indian soil, it will assume the functions of a normal government operating in its own territory. Many new departments will then be started. With the formation of a Provisional Government of Azad Hind, the Indian Independence Movement has obtained all the preconditions of success. It remains now to start the final struggle for freedom. This will begin when the Indian National Army crosses the frontier of India and commence its historic march to Delhi. This march will end only when the Anglo-Americans are expelled from India and the Indian National flag is hoisted over the Viceroy's House in New Delhi.

EXHIBIT JJJJ

III. Hq Form No R—1

ENROLMENT FORM OF CIVIL VOLUNTEERS FOR THE AZAD HIND FAUJ (I.N.A.)

You are warned that if after enrolment it is found that you have given a false answer to any of the following questions, you will be punished in accordance with the law laid down by the I.I.L.

1 Name (in Block letters)

2 Address

(a) *In India* (i) Village. (ii) Post Office. (iii) Thana. (iv) Tahsil (v) District. (vi) Province.

(b) *In East Asia* (i) Post Office. (ii) City or Town (iii) District. (iv) Kampong or Estate. (v) Country

3 Age.

4 *What are your qualifications* —(a) Educational (b) Linguistic (c) Technical.

5 *Married or single.* If married where is your family now? Number of children alive.

6 Have you ever been imprisoned by the civil power (what for)

7 How employed at present.

8 Have you ever served in the Army? If so for how long and in what capacity

9 Are you willing to go and serve wherever the I.I.L. orders you whether in the I.N.A. or in any other capacity I solemnly declare that the above answers made by me to the above questions are true and that I am willing to sign the attached pledge

CERTIFICATE OF ENROLLING OFFICER

I certify that the answers to the above questions were given and recorded by me (or in my presence) at the day of 26

Signature of Enrolling Officer

DESCRIPTION ON ENROLMENT (See instructions below)

To be completed by R.O. or (Local Chairman, or Secretary of the League)

Age	Years	Chest	Minimum	Inch
Height	Ft	Inch.	Measurement	Max.
				Inch

To be completed by Medical Officer

I consider him for the Army (Insert here fit or unfit)

Identification marks

Date

Place

Medical Officer

Note —(a) General Health must be above average Should have no disability which is likely to interfere with the Military duties (b) Men who have no family encumbrances here will be preferred (c) Men who can read and write at least in their mother tongue would be preferred.

PLEDGE

1 I hereby voluntarily and of my own free will join and enlist myself in the Civil Volunteers Organisation of the Indian Independence League 2 I solemnly and sincerely dedicate myself to India and hereby pledge my life for her Freedom I will serve India and the Indian Independence Movement to my fullest capacity even at the risk of my life 3 In serving the country I shall seek no personal advantage for myself 4 I will regard all Indians as my brothers and sisters without distinction of religion, language or territory 5 I will faithfully and without hesitation obey and carry out all orders and instructions given to me by the Indian Independence League and I will carry out all just and lawful commands of my superior officers under whom I may be required to serve from time to time

Date

Place

26

Signature

Exhibit NNNN

THE CHARGE OF THE IMMORTALS

It was a flat stretch of land without any cover either from view or from fire, except a shallow dry pond near which three Roads of great tactical importance met. Four miles North-West of this point was a Hill 1423 feet high behind which the enemy Artillery was located so as to cover the road junction and the area south of it, the occupation of which would effect the entire plan of operations. As a key point like this was placed a company of Azad Hind Fauj under the command of 2/Lt Gian Singh Bisht trained at the Officers' Training School, Azad Hind Fauj. The company was only ninety-eight strong. They had no machine-guns or even light machine-guns. Good old rifles were their only weapon of defence or offence apart from two A/Tk mines. Their orders were to check any enemy advance at all costs. They remained in the position for two days, but the enemy dare not advance. Then on 16th of March, 1945 at starting early morning hostile, Fighting Planes bombed and machine gunned their positions until about 11 a.m. Having got rid of all the load they had, aeroplanes went away. Then the enemy guns from behind the Hill started registering, and behind this barrage of Artillery fire advanced a column of motorised Infantry consisting of 13 tanks, 11 armoured cars and 10 trucks. Half of this column made its way straight towards the Pond where two Forward Platoons of the Company were in position. Lead and explosives were being thrown out of the Armoured Fighting Vehicles, but this would not frighten our boys, they waited in their trenches for the infantry to debuss. Tanks and Armoured Cars like steel monsters creating hell with their fire power approached so close that they started charging on to our trenches so as to crush and cripple our men under their heavy weight. Two mines were thrown in their way which unluckily did not burst, but they caused monsters to stop which having stopped became stationary pill boxes oozing out most inhuman forms of killing materials. There was no communication between this post and the Battalion HQ. When 2/Lieut Gian Singh appreciated that their Rifles Fire was no match to the enemy's mortars, machine-guns, light automatics and hand grenades and their staying in trenches meant certain death or captivity with no loss to the enemy, he ordered, "Charge". Leading the assault he shouted slogans of "Netaji-ki-Jai", "Inqalab Zindabad", "Azad Hindustan Zindabad" and "Chalo Delhi". All the men responded to slogans which echoed above the enemy fire. This was the only support which these heroes had against the superior armament of the enemy. In the name of India and Indian Independence they charged into the enemy trucks. The enemy immediately debussed. Hand-to-hand fighting ensued which lasted for full two hours, but our heroes would not give in, forty of them sacrificed their lives after killing more than their equal number of the enemy. Their uncon-

querable spirit harassed the enemy so much that he started retreating just then 2/Lieut. Gian Singh called forward his Third Platoon Commander 2/Lieut. Ran Singh and was giving out orders when a bullet struck on his head and he fell down never to give out orders again. 2/Lieut. Ran Singh then collected the remnants of the company and reorganised. 2/Lieut. Gian Singh Bisht used to tell his men that he would die with them. He fulfilled his promise and remained their comrade in life and death. This was a glorious deed of which the History will remain witness as long as there is world. 2/Lieut. Gian Singh and his men lived up to the ideals of our Great Leader—the Netaji—and have laid down their lives fighting by their posts to build up a tradition for us to follow. In Free India the spirit of those heroes who knew no defeat would be worshipped for generations to come and would inspire the future sons of India to live up to such high ideals.

Dated 9th April 1945 Commander 801 Unit (Sd) G S DHILLON Lt-Col
ANNEX. (A) Exhibit SSSS

Announcement of the Board of Information

11 00 a.m. October 23 1943

Mr Subhas Chandra Bose established the Provisional Government of Azad Hind on October 21. Accordingly the Imperial Japanese Government recognized the new Government today, October 23 and it was so notified by the latter immediately.

ANNEX. (B)

Exhibit TTTT

Statement of the Japanese Government

October 23 1943

The Provisional Government of Azad Hind has been established under the leadership of Mr Subhas Chandra Bose. The Imperial Japanese Government confident that this marks an epoch making step towards the long-cherished aspiration of the people of India for the consummation of an independent India has recognized the Government as the Provisional Government of Azad Hind, and hereby declares that every possible assistance and support will be afforded to the latter's efforts for the achievement of its aim.

ANNEX. (C)

EXHIBIT UUUU

STATEMENT BY PRIME MINISTER GENERAL HIDEKI TOJO REGARDING THE INDEPENDENCE OF INDIA.

(Delivered before the Assembly of Greater East Asiatic Nations, 6 Nov. 1943)

Not only India but all Greater East Asia was without doubt highly invigorated by the speech just given by His Excellency the Head of the Provisional Government of Azad Hind in which His Excellency made it clear that the Indian people under the Provisional Government with the future destiny of India and of Asia at heart have risen resolutely to realize their long-cherished aspiration to regain India's freedom, independence and prosperity. As has been reiterated in the various statements already issued the Empire of Japan means to give India every possible aid so that she may free herself from the American and British yoke and attain her long-cherished ambition. Now that the foundation of the Provisional Government of Azad Hind has been solidified still further and the Indian patriots under the same Government, bound in close units as never before are firmly determined to accomplish their steadfast aim I take this occasion to declare that the Imperial Government of Japan is ready shortly to place the Andaman and Nicobar Islands, Indian territory now under the occupation of the Imperial Japanese Forces under the jurisdiction of the Provisional Government of Azad Hind as the initial evidence of her readiness to help in India's struggle for independence.

The lofty ideal that guided Japan's national founding of enabling all peoples to have each its proper status and to enjoy well-being has been and is been steadily carried out. The Japanese Empire today has been strengthened further in its determination to extend all-out co-operation to India in her fight for freedom. Japan is anxious that the Indians on their part shall extend redoubled efforts in that direction. From the spirited utterances by Their Excellencies the Representatives of various countries of Asia at yesterday's and today's sessions of this Assembly, I note with assurance and satisfaction that these countries, in concert with Japan, are extending every support to the cause of India's independence, I trust and hope that they will give even greater support to that cause in the future.

ANNEX. (D)

Exhibit VVVV

ANNOUNCEMENT OF THE BOARD OF INFORMATION

1 00 p m 26th Nov , 1944

Conversations have been going on between Mr Subhas Chandra Bose, Head of the Provisional Government of Azad Hind, now staying in Tokyo, and the representatives of the Imperial Japanese Government concerning measures for increased co-operation between the two Governments in regard to the successful consummation of the Great East Asia War and of the independence of India. As a result of these conversations, it was decided that the Japanese Government would send diplomatic representatives to the Provisional Government.

Exhibit XXXX

MONTHLY BULLETIN OF THE MALAI BRANCHES DEPARTMENT I I. LEAGUE

Oath of Allegiance to the Provisional Government of Azad Hind.

Indians in the East Asia today are no more the subjects of an alien power, they are the proud citizens of the Provisional Government of Azad Hind. To bring this home to the mind of every Indian in Malai and to rouse our community to full realisation of the responsibilities of the new status, it has been decided to ask each member of the Indian Independence League to take an Oath of Allegiance to the Provisional Government of Azad Hind. Detailed directions regarding this have already been sent to all the State Branches along with the form of the Oath. Each member, on taking the Oath, will be given 'Oath of Allegiance Card', and the Indian Independence League Membership Card he or she now holds will be taken back by the officer administering the Oath and destroyed. The privilege of owing allegiance to our Government will be extended only to members of the Indian Independence League, as any Indian who is not a member of the League cannot be considered as a true India. As Netaji said in his speech in Syonan on 25th October "We will not treat them as Indians or friends. There is no place for them in India."

INDIAN INDEPENDENCE LEAGUE HEADQUARTERS

Statement showing the donations received from various places in Malau up to 30th November, 2603,
for Indian Independence Movement.

Name of place	December 02 to 4/7/2603	July	August	September	October	November	Total
Syonan	\$50,878 11	\$186,486 10	\$2 869 00	\$693 205 99	\$381 764 66	\$768,375 97	\$2,083,579 83
Johore	150,000 00		3,519 00	45 794 20	30 500 00	185,085 00	414,898 20
Malacca				45,329 17	52 183 00	248,709 00	346,221 17
Negeri Sembilan	37 000 00			35,454 00	5 000 00	22,217 08	99,671 08
Selangor	191 787 81				426 031 39	208,817 54	826 696,74
Perak	60 000 00			50 933 49		2,111 00	113,044 49
Panang	123 511 90			357,290,90	315,799,41	327 682 45	1,324,224 66
Kedah	12,600 00				110 320 01		122,920 01
Pahang						10,000 00	10,000 00
Kelantan						1 350 00	1,350 00
Trengganu						1 400 00	1,400 00
Totals	\$625,807 82	\$186,486 10	\$6 388 00	\$1,227,917 75	\$1,521 598 47	\$1,775 748 04	\$5,343 946 18

Articles of Gold jewellery and Silverware etc. donated to the Indian Independence Movement Fund—Approx. value \$86 310 00. A sum of \$400 000/ has since been credited by Perak Branch. This has not been included in the above statement as the intimation has been received in December 2603 only.

(Sd) Chief Accounts Officer I I L. Headquarters

Syonan, 4/12/2603.

Exhibit YYYY

MONTHLY BULLETIN OF THE MALAI BRANCHES DEPT. I I. LEAGUE
Brevities from branch reports for the month of June, 2604.

	MEMBERSHIP		OATH OF ALLEGIANCE	
	Enrolment in June.	Total as on 30-6-2604.	Taken in June:	Total as on 30-6-2604:
Syonan ..	1,960	64,336	4,800	39,999
Johore Bahru ..	642	16,299	1,482	10,218
Batu Pahat ..	107	3,969	245	2,085
Muar ..	160	5,767	383	2,578
Selangor ..	114	6,124	298	3,382
Tangkak ..	25	3,787	165	1,605
Labis ..	380	2,911	906	1,857
Kluang ..	368	9,194	856	5,287
		48,051		27,012
Malacca ..	121	6,395	141	4,235
Jasin ..	212	4,306	531	2,144
Anor Gajah ..	571	5,540	871	3,946
		16,241		10,325
Seremban ..	230	7,075	338	5,890
Tampin ..	72	2,236	204	1,606
Gemas ..	38	2,034	63	1,500
Nilai ..	30	2,496	45	1,648
Rantau ..	411	2,585	388	1,888
Port Dickson ..	369	5,977	500	2,492
Kuala Pilah ..	9	1,788	16	1,244
Bahau ..	80	3,940	482	1,376
Jejebu ..	15	451	35	424
Raub ..	43	1,423	60	1,299
Kuantan ..	36	2,257	47	1,927*
		9,425		7,744
Kota Bahru ..		1,535	39	918
Pasir Mas ..		444	9	252
Kuala Krai ..		1,539	2	978
Tumpat ..		154	5	275
		3,672		2,423
Kuala Trengganu	23	781	36	764
Dungun	137	1,105	326	916
Kemaman	56	514	96	310
Besut		Report not received.		
				232,562

*Includes Oath of Allegiance taken at Pekan.

MEMBERSHIP

OATH OF ALLEGIANCE

374

STATEMENT SHOWING COLLECTIONS FROM MALAI
UP TO 31st JULY 2604, FOR

The Indian Indapendence Movement.

Centres	Total up to 30 6 04	Collections during July, 2604.	Total up to 31 7 04
Syonan	\$ 3,893,059.29	178 540.45	4,071,599 74
Johore	1,445 818 53	255 514.36	1 600 695.89
Malacca.	1 025,441 93	97 234.11	1,122 676 04
N Sembilan	557 051 38	68,183.89	625,235 27
Selangor	1 869 074.05	151,067 36	2,020,141.41
Perak	1,415,387 06	131 077 71	1,546,464.77
Penang	2 708,805 96	86 389.14	2 795,195 10
Kedah	973 088 12	116 589 64	1,089 677 76
Pahang	263,836 97	13,732 16	277,569.13
Kelantan	101,950 00	44,000 00	145,950 00
Trengganu	50,939 00	7 000.00	57,939 00
Total	\$ 14,303,815.29	1,049,328 82	15,353 144.11

This does not include articles of gold jewellery and silver ware, wrist watches and fountain pens

Sd.—M. N. Menon, Chief Accounts Officer I I L. Rear H. Qrs.

Secret.

Exhibit CCCCC

Synon-to 23rd December 2604.

To the Head of State, Provisional Govt. of Azad Hind
Jai Hind,

A short note on the work done at Port Blair by the staff of the Provisional Government of Azad Hind from 18th February 2604 to the date of my departure 30th September 2604 is submitted. The problems in the Andamans are about the same as are common in all occupied territories with the exceptions that are peculiar to Islands that are far flung and form the front line of offence or defence. The defect in the quality and quantity of food is partially made good by the intense self-sufficiency programme to the extent possible locally. The increasing shortage of clothing has to remain unsolved as importation is impossible. The civilians have realised that while the War is on they have to put up with discomforts and inconveniences, go without even some of the essentials and should give their best for the final victory. It is pleasing to record that the maximum output consistent with health and fitness has been reached. But the local administration as judged by the standards of their own country may be less generous in their findings but this misconception is due to the exhibition by the civilians of depression and helplessness and the feeling of insecurity caused by the spy scare. It is astounding to note and I am ashamed to acknowledge that there should have been so many cases of spying by the Indians in these inaccessible but liberated Islands. Considering the smallness of population the greatness of their illiteracy the absence of intelligentsia, the definite anti-British feeling amongst the ex-convicts and their pro-Japanese feeling on being released and made free citizens with the prospects of returning to their homes in India. I must confess that my comprehension is at a discount, not to discover the cause of spying. The table below shows the period covered and the number punished so far

Case No	Date	Shot or hanged	Imprisoned for various terms.
1	March 2603.	7	—
2	January 2604.	* 43	22
3	April 2604.	9	1

Exhibit DDDDD**ARZI HUKUMATE AZAD HIND (THE PROVISIONAL GOVERNMENT OF FREE INDIA)**

I hereby appoint Lt Col A. D Loganadan, I N A , as Chief Commissioner of the Andaman and Nicobar Islands The appointment is to take effect from the date of his departure for the Andaman Islands

Bangkok,

Subhas Chandra Bose, Prime Minister

The 6th Jan., 1944

The Provisional Government of Azad Hind

ARZI HUKUMATE AZAD HIND (THE PROVISIONAL GOVERNMENT OF FREE INDIA)

Confidential

Copy of instructions for Lt. Col A D Loganadan, Chief Commissioner, Andaman and Nicobar Islands

Lt Col Loganadan will select and appoint his staff on the lines discussed with me The final selection made by him should be duly communicated to me Regarding the work to be undertaken in the Andaman and Nicobar Islands, full instructions have been verbally given by me

Bangkok,

Subhas Chandra Bose, Prime Minister,

The 6th Jan , 1944

The Provisional Government of Azad Hind

Exhibit EEEEE**Strictly confidential**

Navy Department, Tokyo.

November 16th, 1943, Navy Department, Tokyo.

Dear Sir,

I have the honour to send you herewith the reply of the Imperial Japanese Navy to the desires expressed by your Excellency in the course of our conversation on November 12th I desire to avail myself of this opportunity to convey my sincere wishes for Your Excellency's continued good health and for the speedy attainment of the object of the founding of Free India

Yours respectfully,

His Excellency Mr Subhas Chandra Bose, Sd Takazumo Oka, Vice-Admiral

Head of the Provisional

T Oka, Chief of Military Affairs, Section,

Government of India

I. J N

Mr Bose's visit to the Andaman and Nicobar Islands Barring a sudden change in the military situation, arrangements will be made to have this visit made during the early part of December Details of the trip will be communicated to Mr. Bose by the Commander-in-Chief of the Fleet stationed in Shonan This trip is to be kept strictly secret until its completion Publicity subsequent to the completion of the visit It is desired that this publicity be undertaken along the lines formally communicated to Mr Bose by Prime Minister Tojo on November 13th, i.e., to the effect that " We are already going ahead with preparatory measures necessary for a speedy and smooth transfer of the Islands, (such as etc)" Appointment and dispatch of a Governor In accordance with the statement made by the Prime Minister, a Governor is to be appointed after completion of the transfer It is to be understood that, pending completion of the transfer, an official of the Provisional Government bearing some such title as " Chief Commissioner for the Andaman and Nicobar Islands " should be dispatched to co-operate fully in the

military administration of the Islands under the direction of the Naval Commandant there. Dispatch of an army contingent by the Provisional Government. The Naval Authorities can fully appreciate the reason for the Provisional Government's wishes in this matter. But since the time and method of carrying out this measure must be made to fit in with the conditions prevailing on the Islands, an answer on this point will be given later after further consideration. There would, however, be no objection to the dispatch of two or three military liaison officers. Dispatch of Indian engineers. Considering that the two islands constitute an area of intensive military operations, there would be no objection to carefully selected technicians being sent after consultation with the Naval Commandant of the Islands. But in view of the conditions now prevailing there, it is to be understood that for the time being such technicians are to co-operate in undertakings connected with military operations. Attention must be called finally, to the fact that since the transportation and communication facilities are only sufficient for our military needs, it will be difficult for the present to carry out any policy which will make any considerable demand upon ships or communication facilities.

Exhibit GGGGG

Ref — Gen /1/04/Andamans

Port Blair, Andamans

15th March, 2604.

From The Chief Commissioner Andamans and Nicobars Port Blair

To Headquarters, Provisional Government of Azad Hind C/o The Indian Independence League, 7 Chancery Lane, Syonan—To

Having left Syonan on 17th February 2604 the party arrived at Port Blair on the 18th mid-day. We were accommodated temporarily in the bungalow of Min Sei Bu-cho (Chief of the Civil Administration). Owing to extreme congestion, with difficulty a small bungalow was ultimately found, to which we shifted on the 11th instant. On the 21st of February there was a rally to celebrate the first Provisional Government Day and another rally on the second Saturday to mourn the death of Shri Mata Kauturba Gandhi, and also to celebrate the Arakan Victory. It is hoped to set up an office a few days hence when the transference of some of the departments will be made, details of which are still under discussion. The packages have not yet arrived, maybe they may not have been despatched so far from that end. Attempts may please be made to expedite despatch, as the stationery is urgently required here. Sorry to report that nothing whatever is available here locally, and hence we are seriously handicapped. Crockery and cutlery for a dozen persons if despatched will greatly be appreciated. Dysenteries, amoebic and bacillary are endemic and in equal proportion. It will greatly help if emetine or its equivalent as much as can be spared could be sent. There is not a grain of Mag Sulph available here. About 20 lbs which will last about 3 months may please be also sent. All kinds of food-stuffs are scarce, and the chance of feeding the population with a well balanced diet is remote. Up-to-date no communication has been received from that end, and therefore we are absolutely in the dark as to what is happening outside. Jai Hind

(Sd) A. D. Loganadan, Chief Commissioner, Andamans and Nicobar

N.B. One copy of this report may please be forwarded to the head of the State if considered necessary

Exhibit HHHHH

OFFICE OF THE CHIEF COMMISSIONER.

Andaman and Nicobar, Port Blair

Ref Gen/2/04/Andamans

2nd April, 2604.

Secret and Confidential Monthly Report for March, 2604.

I have the honour to report on the progress made since my last letter ref G/1/04/Andamans, dated 15 March, 2604. Received cable from Netaji Bose dated 24 March, 1904, asking for a progress report since my arrival. A copy of reply-cable is attached. Received another cable from Netaji Bose dated 29 March 2604 promoting Lieutenant Colonel A. D. Loganadan to the rank of Colonel from 31st March, 2604. Both the cables were timely. On the 21st of March after the rally of the monthly Provisional Government Day a dinner was arranged, when the announcement of the opening of the offices and the appointment of Officers was made. Besides the representatives of each Section, the Naval Admiral and the Army General were present.

(a) Capt. Alvi was appointed as the Chief of Education Department and Commandant of the Volunteer Corps; (b) 2/Lieutenant Suba Singh Assistant to Captain Alvi (c) 2/Lieutenant Iqbal. Attached to the Police Department.

Education. (a) The schools are closed for the summer vacation. Ten boys have completed their schooling. Their future training for technical or general service is specially under consideration owing to the acute shortage of educated men. (b) On re-opening of schools in May, Romanised Hindustani will be introduced in the primary classes in place of Urdu which had been in vogue hitherto.

To

The Head of State, Provisional Government of Azad Hind, C/o Indian Independence League, 7, Chancery Lane, Syonan.

Ref Gen/2/04/Andamans

Volunteers. The change-over of their training on I. N. A. lines is being taken up. Owing to shortage of labour force, their increase is not likely.

Police. This needs very delicate handling. Dual control will not be practicable. Spying-scare is at its minimum at the moment. It is very regrettable that a great number in Andamans, as compared to other Indians in the Far East, have been proved to have been spies, and punished in proportion to the severity of the crime.

The Public. Their loyalty and respect to the Provisional Government will be proportionate to the extent and degree of Police powers made available locally, and not to the victories of the front. This is quite compatible with the general level of political consciousness that could be expected from an assorted all-India collection, not of a very high standing.

The Health and Welfare of the people cannot be better under the conditions that have to perforce exist during the war time. The shortage of clothing is so great among the peasant women folk in particular that nationalism cannot be raised to increase the war-effort without a supply of clothing. Local manufacture is not possible for want of raw material, though skilled weavers are available. So far no copies of newsprint or pamphlet have been received in spite of personal instructions to the Press Propaganda and other Departments. Jai Hind.

(Sd.) A. D. L. Chief Commissioner, Andamans and Nicobar

Exhibit IIIB

OFFICE OF THE CHIEF COMMISSIONER
Andaman & Nicobar, Port Blair

Ref Gen/3/04/Andamans

4th May, 2604

Secret & Confidential.—Monthly Report for April, 2604

I have the honour to report on the progress made since my last letter Ref Gen/2/04/ Andamans, (Monthly report for March, 2604) No communication other than the two cables from Netaji has been received since arrival in these islands. On 16-4-04 the Administrative (Officials) and Consultative (Non-officials) Committees which have cultivated their utility, were dissolved. On the 21st April a rally of the monthly Provisional Government Day was held. Especial emphasis was laid with reference to spying which is a source of a lot of anxiety to the Defence authorities. On 29-4-04 an Assembly of the Andamans Administrative Councillors consisting of non officials and officials and also advisors of Nippon authorities, was formed with the Chief Commissioner as Chairman. The rules for the conduct of the above Assembly as framed by the Nippon authorities, are attached along with the Opening Address of the Chairman. Unfortunately, spying is said to be still going on. The punishments have scared the people to such an extent that they have become fatalists without any initiative left in them. Details of the cases are also appended for information.

Education Salutation of tricolour flag daily with the National Anthem, singing of National songs, drill with the Hindustani words of command P T, gardening poultry farming Indian games, first aid & health-dramatisation spiritual training and Romanised Hindustani are the new features that are being enforced in schools. Adult literary campaign is out of the question so long as the intensive demand for labour exists.

Sd/- A D L. Chief Commissioner Andamans & Nicobar

Exhibit JJJJJ

OFFICE OF THE CHIEF COMMISSIONER ANDAMANS & NICOBAR

Ref Gen/4/04/ Andamans

Port Blair 12th June, 2604

Secret & Confidential Monthly Report For May 2604

I have the honour to report on the progress made since my last letter Ref Gen/3/04 Andamans dated 4th May 2604. Barring three issues of the 'Azad Hind' no other communication has been received. The first meeting of the Assembly of the Andaman Administrative Councillors was held on 13th May when the question of self sufficiency was taken up in detail. Useful information is available in the "Andaman Shimbun" of 30th May under the heading Executive Plan, a copy of which is attached. On the 21st of May a rally of the monthly Provisional Government Day was held, one in the town (Aberdeen) and another in one of the suburban villages. chief emphasis was laid on spying and its dangers.

Spying Shows no signs of diminution. So far the staff of this office has not been given a chance to take part in the investigations. I am sending a scheme to the Shrikhan for consideration, and the reply will be communicated on receipt.

Education. This is the only Department which more or less has been handed over to us. A programme of complete nationalisation of the Indian primary schools has been worked out, and it is being given effect to. The progress is promising considering extensive adjustments that have to be reconciled to by the staff of teachers from the previous methods. Jai Hind.

Sd/- A D L. Chief Commissioner Andamans & Nicobar
To The Head of State, Provisional Government of Azad Hind.

Exhibit KKKKK

OFFICE OF THE CHIEF COMMISSIONER, ANDAMANS & NICOBAR

Port Blair 1st July, 2604.

Ref · Gen/5/04/ANDAMANS

SECRET MONTHLY REPORT FOR JUNE 2604

I have the honour to report on the progress made since my last letter Ref Gen/4/04/Andamans dated 12th June. Pleased to state that the "Azad Hind" issues for May were received in three lots, and two letters from the League Headquarters. The second meeting of the Assembly of the Administrative Councillors was held on the 10th June. Self-sufficiency programme was re-discussed and intensified. It is hoped that, if the monsoons are favourable, the food production would be better than the previous year.

Spying Details of spy-cases asked for officially two months ago have yet to be received. In the meantime I am giving the figures obtained unofficially. This may be taken as correct provisionally.

Case No	Date	Shot or hanged	Imprisoned for various terms
1	March 103	7	22
2	January '04	43*	6
3.	April, 2604	3	4
4	May, 2604.	2	4
5	June, 2604 (Under investigation)		

* A few of them are said to have died of illness developed while under-trial

The initiation enquiry, investigation and trial of these cases were conducted as per Japanese methods, which deviate greatly from Congress standards. My request for the association of the Staff of the Provisional Government is being kept in abeyance by them. The general re-action on the population towards the Indian Independence Movement, as one would expect, is very poor. All the communications to and from this Office are being scrutinised. A change of Shirikhans had taken place a week ago. The expenditure incurred by us to-date comes to about Rs 2500,00. Jai Hind

Sd /—A D L, Chief Commissioner, Andamans & Nicobar

To Head of State, Prov. Govt. of Azad Hind

Exhibit LLLLL

Confidential

ARZI HUKUMATE AZAD HIND (THE PROVISIONAL GOVERNMENT OF FREE INDIA)

Rear Headquarters of the Provisional Govt of Azad Hind, Rangoon, the
21st June 1944

Col A.D Loganadan, Chief Commissioner Andamans and Nicobar Islands,
Port Blair

Jai Hind

I was glad to receive your letter of 15th March and the 22nd April. I also received two reports through the Hikari Kikan—one on the 22nd April and the other on the 15th June. I am gratified to learn from different sources that you have been carrying on your duties with ability and tact. I am, however, not satisfied at the progress made in actually transferring the administration. For this, I do not blame you. I am anxious to know how you have been keeping in health,

because I was informed that when you left for Port Blair, you were in poor health. I hope you are taking all possible care of your health. Please let me know by wire, if necessary—if you need more money I wonder if you have succeeded in organising a unit of the I.N.A. there. I understand that you are the Chairman of the Civil Administration Council of the Andaman and Nicobar Islands. I understand, further, that this Council is an Advisory Body. Is that correct? Along with your letter of the 16th March, I received a group photograph taken after your arrival in Port Blair. I am sorry that we have not attended to your needs from this end—but we shall do so in future. Since you left Malaya, events have been moving at a break neck speed and we have all been plunged in work.

I note that in your first letter you wanted cutlery and crockery and also medicine. If we can arrange for the transport through the Navy, we shall send you the articles. I shall also try to send you the propaganda material from time to time. I entirely agree with you that without police powers you cannot have prestige in the eyes of the people. You may tell the authorities that I am dissatisfied at the progress made in the transference of the administration. You must be aware that our army is now fighting on Indian soil—in Manipore and in Kohima sector (Assam). On the whole, our troops have done very well and have earned the appreciation of the Nippon Army. Col. Chatterji is the Governor-designate of the liberated territory. We have started a new organisation called the Azad Hind Dal. It is a semi-military organization consisting of civilians and administrators who will be going to India in the wake of our victorious armies. I am now in Rangoon on a short visit from the front. I also paid a flying visit to Syonan and have just returned from there. I shall soon be moving forward again. Hope this will find you all well. Cordial greetings to all. Jai Hind.

Sd./ Subhas Chandra Bose.

Exhibit M M M M M

OFFICE OF THE CHIEF COMMISSIONER, ANDAMANS & NICOBAR.

Port Blair, 31st July, 2604.

Ref Gen/7/04/Andamans.

Secret.

MONTHLY REPORT FOR JULY, 2604

Your letter of the 21st June was received on the 15th instant.

Transference of Departments 'Minseibu' is the Department which is directly responsible for all the Administration of the civilian population in Andamans hence all my work is wholly linked up with this Department.

(i) I am the Advisor to the Head (Minseibuchō) (ii) Captain M H Alvi is in charge of Education and Volunteers (iii) and Lieutenant Suba Singh is attached to Finance and Propaganda (iv) and Lieutenant Iqbal is attached to the Police.

It is hoped that each of us would not miss the opportunities placed at his disposal to make himself useful, and later indispensable. A good deal of mutual good will and co-operation is essential, and this shall not be wanting from our side. Taking condition and circumstances as they stand or could be visualised in the near future. I am of opinion that transference of departments should not be speeded up. Hence the need for further funds would not arise in a hurry.

Spying As indicated in my previous reports, handling of this problem is the most important as it adversely affects all our activities here. I have had detailed discussions with the Authorities and we do hope to succeed in reducing it to the mini-

mum, if not completely controlling it, by intensive propaganda and local executive action. I am pleased to report that the most recent case of June, wherein 37 were arrested (including witnesses) terminated in the release of all, except one who was sentenced to seven years' imprisonment. This favourable judgment has dispelled the gloom and is bound to cheer up the people to greater war efforts.

Unit of I N A. & Azad Hind Dal Owing to extreme shortage of labour of all kinds and greater shortage of personnel of the fighting-fit class, raising of a Unit of the I.N.A is out of the question. This applies equally to A H. Dal.

To The Head of State, Provisional Government of Azad Hind, Burma

The Andaman Administrated Advisory Council The members of the above council consists of ten officials and ten non-officials of all classes of interests and are well represented. It is purely an advisory body with a self-imposed restriction on the freedom of speech, in spite of apparent official encouragement. They can become more useful with increase in their personal liberties.

Finance Expenditure incurred up to the end of July is approximately Rs 3,00,000. The staff has not drawn any allowance, as it is not required for use locally. Further funds for transferred subjects will not be required for some good time. The monthly Teachers' Conference, the Assembly Meeting and the Provisional Government Day were held as usual. We are proud of the achievements of our Army—earning the appreciation of the Nippon Army being in itself an achievement. The Staff and I do feel sincerely that we are left out from the more thrilling excitements of the front line. Our needs are small, and are sufficiently self-contained. There is no longer any need for crockery and cutlery or medicines, as we have salvaged sufficiently for our daily needs. I am writing a separate note to the I I. League Headquarters at Syonan to conform to the promise of a more regular despatch of newsprint, which we greatly look forward to. My health has improved quite to my satisfaction. All the staff are keeping fit. With the termination of the monsoons we expect to hear of something really happening up there. Jai Hind

Chief Commissioner, Andamans & Nicobar

Exhibit NNNNN

OFFICE OF THE CHIEF COMMISSIONER, ANDAMANS & NICOBAR

Ref Gen/9/04/Andamans
Secret.

Port Blair, 5th September, 2604

MONTHLY REPORT FOR AUGUST, 2604

Transference of Departments The Officers attached to the various departments are doing their best to carry out the duties expected of them. They are getting to know the Japanese Officers better, and it is hoped that greater trust would be the result.

Spying. There has been a lull after the last big spy-case, but in the course of the last week a few suspects have been going through an investigation. The people are so nervous that action even of minor importance seems to upset them. The monthly Andamans Advisory Council meeting and the Azad Hind Day were observed as usual.

Finance Expenditure incurred up to the end of August, 2604, is Rs 3,500 00. The average expenditure per month worked out at about Rs 500 00. The despatch of newsprint and correspondence from Syonan seems to be more regular, though their receipt varies according to the availability of transport. Jai Hind

To the Head of State,
Provisional Government of Azad Hind,
Burma.,

Chief Commissioner, Andamans &
Nicobar
Sd ADL

Exhibit OOOOO

Your Excellency,

Respectfully I beg to request you to regard this letter as strictly personal. The objective of this letter is to remind you all the points I have discussed with you from time to time. It is written very frankly and as such I request, should on no occasion be construed as an official letter. In the attached application I have asked for a transfer which I hope you will be good enough to recommend. You had honoured me by taking me on your staff in order to recruit and train any local volunteers into I N A. units. Since this could not be done I had to do odd jobs for which no Military training is required. I therefore request you to recommend my transfer so that I may be able to take a more active part in the struggle for my country's independence. During seven months I have watched the state of your health with great concern and anxiety. It was moving to see you gallantly resisting the disease and frequent paroxysms of pain without any medical help or advice at hand and all the time living on a liquid diet. Now that you are leaving for Syonan, I hope you will listen to medical advice and not risk your precious health by choosing to remain so far away from medical help. If you be thus prevented from coming back, I in your absence, will endeavour to officiate in your place to the best of my ability till the arrival of your successor, when I will entertain hopes of my transfer. Should it be decided that no successor is necessary and I can be left in charge here, I beg to submit the following for your consideration. This job under the present circumstances, is of the most delicate nature and demands maturer experience and some diplomatic training which qualities I don't profess to possess. I do not know how I can maintain the prestige of the Provisional Government here without either commanding the least respect and confidence of the people, or being able to render any co-operation to the Government for if I cannot help the people in the least in their misfortunes, I cannot expect to work them into patriotic frenzy and make them go all out to help the Government war effort. Already the local public is losing all confidence in us as is evident by their attitude towards the League activities. For months past not a single volunteer has turned up for training and few people dared to come near any one of us lest they may be suspected. The last Provisional Government Day Meeting attended by a score of men or so serves as a useful index to the response of people. Yet so far they have a little hope that Provisional Government arrival and intercession may better the situation. Once that hope is gone the last vestiges of confidence and respect will disappear. We all, after learning the origin of each spy case from non-official but reliable sources, are convinced that all the people punished were anything but spies, while the higher Nippon Officers sincerely believe that they were. Your persistent efforts in trying to show them where they have been and are still likely to be, misled by unscrupulous and criminal Indians have so far not met with much success. For myself I cannot hope though try I will, of improving a situation where your weighty efforts have not born much fruit. I also agree with your Excellency's view that under the present circumstances our Netaji's intervention will only stiffen the attitude of the local Japanese Officials attitude towards us. So it is more probable that the present state of affairs will continue.

In our discussions here the advisability of not bothering about the spy cases has also been considered, but this is a line of action which I am afraid I cannot adhere to unless I am otherwise ordered. If I see every month scores of men, mostly victims of personal spite of one scoundrel or the other, clapped into jail and tortured and a number of them executed and absolute insecurity of life and liberty prevail

ing I as an Indian and human-being *cannot* help bothering. Already the plight of my countrymen and countrywomen has proved a great mental torture to me. So far there was a little buoying hope that Provisional Government's offer of help to save the authorities from being misled might retrieve the situation but once the principle is accepted and recognised that Provisional Govt is to watch but not to open its mouth where the question of spying is concerned, the mental agony already too great will become overwhelming and unbearable. I have not the heart to chase away from our door old mothers, young wives and small children who on their knees and with tears in their eyes ask us in the name of Netaji and Provisional Government to intercede on behalf of their sons, husbands and fathers. If duty demands I will willingly stick to the last drop of my blood to a trench here or in anywhere worse place devastated by iron and fire, but I find it next to impossible to stick to a place where I am expected to watch, without emotion and without powers of interferences, the executions of men, whom we believe to be innocent, tortures, beatings, burnings, driving of hot iron in the nails, stripping naked of women and burning of their private parts. If I was so callous or my blood so cool, wherefore I should have joined the I.N.A. at hazard of my life in future? This is the chief reason which makes me request you, most earnestly, to strongly recommend by speedy transfer from here and spare me from a job which I am ill-fitted to carry on either by nature or inclination or training.

I may recall to you yet another point. There is every possibility of considerable changes in the attitude of the authorities as well as of the people towards the Provisional Government Staff. As far as the people are concerned, the news of your departure is bound to give rise to several rumours; and once it is confirmed that the Provisional Government is not to help them in the least in their misfortunes, but only to ask them to become patriots, the last shreds of their hope, respect and confidence will be turned into despair, contempt and mistrust. I, or anyone doing my job, will become painfully conscious of being regarded by the people as an hypocrite and humbug. I will not even be able to face them, or wear the badges of my rank, or tread the streets with any sense of self-respect and perhaps I may not be able to assemble and speak to the people or discharge any other similar duties with enthusiasm and keenness.

I visualise a future here where we will be despised, ridiculed, despised and avoided like pariahs by the people and treated with utter neglect and indifference by the Japanese, for as it is we have neither endeared ourselves to the Japanese nor to the people. It is also likely that we may receive certain annoyances from such people whom some of us have deeply offended in our attempts, under your instructions, to find out the truth. You may remember the rumour originating from the most important Indian Police Officer which hinted that should the Provisional Government people think too much of themselves, they will soon find themselves involved in some trouble. Personally I do not attach much importance to the assurances to the contrary given to you by the authorities, nor I fancy very much the fate of a spy, yet since this involves merely our personal safety, I beg Your Excellency to regard this point as one of the least importance.

Another point of importance is that the Japanese, having fine traditions in their Army, attach much respect to age and service, as such I cannot hope to win that respect which you enjoyed, nor I can hope to impress them in any way for I have nothing of importance to do. I am aware of the political significance of the situation and I hasten to make it quite clear that I am not making any suggestions whatever. I am only requesting, and that most humbly and sincerely, for my transfer. I have taken the liberty of describing my point of view at some length under the necessity that since this is the last opportunity for me to state my point of view frankly I had to cover all the likely points as well, for once your Excellency takes off, my

Communication with the Headquarters will, per necessity, be limited to the "All is well here" reports. In conclusion again I beg your Excellency to consider this letter favourably and at your pleasure to acquaint the higher authorities with its contents. My official application being strictly formal cannot convey my deep anxiety to the Officer concerned; my only hope of being able to serve my country more actively in the field of battle is dependent upon your Excellency's recommendation and taking the proper steps in this connection. In the end I heartily wish your Excellency, a very pleasant trip and sound health

To

The Chief Commissioner,
Andamans & Nicobar Islands.

I beg to remain, Sir,
Your most obedient servant.
Sd./ Alve Major I.N.A.

Exhibit P P P P P

To THE MILITARY SECRETARY, INDIAN NATIONAL ARMY

Port Blair Dated 29 Sep 04.

ir,

Most respectfully I beg to request you to transfer me from my present position to any other employment which you may regard proper for me. I have no military duties to perform here for there are no civilian volunteers to be trained. Nor there is any hope of my performing any military duties in future either. As such I request you most sincerely to transfer my duties to some other place where, I may have an opportunity of taking part more actively in my country's struggle for independence.

I beg to remain, Sir Your Most Obedient Servant,
(Sd) M S Alve, Major I.N.A.

Exhibit S S S S S

LONDON NEWS IN ENGLISH (B.B.C. GENERAL FORCES BROADCAST)
2130 hrs

15th July 1944- (Reception poor)

There is conclusive evidence that the German Forces in France are now guarding members of the French resistance group as France Tirurs, and today an announcement issued from SHAEF in the name of General Eisenhower makes these four points (i) the French forces of the interior constitute a combatant force commanded by General Koenig and forming an integral part of the Allied Expeditionary Force (ii) the French forces of the interior in the Marquise (i) bear arms openly against the enemy and are instructed to observe the rules of war They are provided with a distinctive emblem and are regarded by General Eisenhower as an army under his command (iii) Reprisals against resistance groups violate the rules of war by which Germany is bound The fourth point in this Allied Statement is this Every effort will be made to trace the authors of any atrocities against members of the forces under General Eisenhower's command Steps to this end are already being taken. The guilty will be brought to instant (?) justice.

BERLIN NEWS IN ENGLISH 1,700 hrs. 18th July 1944

General Eisenhower, in a declaration broadcast by the B.B.C. tried to galvanise the French partisans as a fighting force. From responsible circles in the Wilhelmstrasse the following statement has been given out. 'This attempt by the Allied High Command is unjustified. French partisans revolt against the Vichy French Government and violate the French laws which impose capital

punishment on such violations. The activities of the French partisans do not constitute a regular war conduct but a malicious system of ambush fighting against the occupation power. Thus the partisans have forfeited the right to be treated as a regular troop."

Exhibit UUUUU

To : Officer Commanding Burma Defence Army

To : Officer Commanding Indian National Army

From Officer Commanding Allied Troops, Rangoon.

Yesterday British Liaison Officers landed at Mingaladon and explained the whole Allied plan for the occupation of Rangoon. 1000 paratroopers landed in the Delta area and are moving on Rangoon. A heavy bomber and fighter sweep operations will take place over Rangoon to-day, as Allied H Q still believe Japs are in the area. You are hereby ordered to hoist immediately large white flags in size at least 10 feet by 10 feet over all B D A and I N A camps in the Rangoon area. You will persuade all civil organisations in the area to do the same. This order will be executed at once.

Most Urgent

Most Secret

Signed W C. Hudson, Officer Commanding, Allied
Troops, Rangoon.

Dated 3rd May, 1945.

Exhibit VVVVV

To Officer Commanding, Indian National Army.

From : Officer Commanding, Allied Forces, Rangoon.

Referring to the conference held yesterday between the officer commanding the Burmese Army, Col Irshad and myself, you are hereby instructed that you will assemble all arms, ammunitions, and military stores in your possession at Cushing School by 0500 hrs to-morrow. You will further confine INA troops of all ranks to barracks by 2200 hrs local time to-day (May 3). Only officers issued with authority signed by myself will be permitted outside barracks and then only on duties of liaison, or much special instructions as I may issue to them. You are held responsible that these orders are executed with energy, and that no areas are permitted to fall into the hands of the BDA or any other organizations or individuals. A statement of the numbers of troops, arms, ammunition and military stores at your disposal will be furnished to this H Q by 1000 hrs May 4th 1945.

3-5-45 1700 hrs

W C Hudson, Officer Commanding, Allied
Troops Rangoon

(Copy to Officer Commanding BDA).

Exhibit WWWW

APPENDIX ' P '

Capt Irshad

I Capt Saleem I Get desertion reports from A II Get Offrs from units and you with them will attend this parade

I I now have about 550 reputed escaped P O Ws, at the General Hospital. Many of these I suspect are in fact recent deserters from the I N A. I am holding an identification parade at 11-30 hrs to-morrow. Will you please depute an officer or officers to be present to identify ex I. N. A personnel. Date of desertion is required,

Inform N C. Dass I think he is in the hospital. Give him implicit orders.

2 Jemadar N C. Dass, late I M D and hygiene party of 28 will report daily to O C Div Bd Hyg Sec. at 231 Ahlone Rd. for hygiene work under his orders. This will include hygiene work within your barrack areas.

3 All fit personnel quartered in the Secretariat will report with their own officers daily for work in the dock area under orders of the Principal Military Commanding Officer.

4 Lt Col Robertson or his rep has been instructed to deal direct with the senior officer at the Secretariat regarding details of place and time of work.

'Tyagi 11th May 1945

Sd. Lauder Brig Dy Mily Govt. Rangoon

Exhibit XXXXX

PROCLAMATION OF THE BURMA REVOLUTIONARY ARMY

The Burma Revolutionary Army has occupied Rangoon since 6 a m Burma Standard Time on the 5th waning of Kason 1907 B E (corresponding to the 1st May 1945). The Burma Revolutionary Army takes the fullest responsibility for the maintenance of law and order in the city and for the safety of the citizens' lives and homes. As the Burma Revolutionary Army is the Peoples Army and is fighting for the people at the war front, the people should give all manner of help and co-operation to the utmost. As a true representative of the people, the fighting forces of the Burma Revolutionary Army will serve for the cause of freedom of the country and the people regardless of danger to their lives. Everyone who is in possession of arms, ammunitions and military property without any special authority of the Army is now required to surrender them at the Army's Armoury or at the nearest police station on or before 3rd April 1945. The Intelligence Department of the Army has prepared a list of unauthorised retainers of military property. Those who are in possession of arms, ammunitions and materials belonging to the Army will be classified as enemies and severely dealt with. During the pendency of the military occupation by the Burma Revolutionary Army all the citizens are strictly enjoined to observe the following:

1 There shall be no communal outbreaks. 2 Murder, theft, robbery and dacoity shall not be committed. 3 No one shall undertake to do anything which gives directly or indirectly any advantage to the enemy. Those who fail to observe any one of the above orders shall be dealt with at the Court Martial.

General Headquarters, The Burma Revolutionary Army

Exhibit II

SPECIAL ORDER OF THE DAY BY SUBHAS CHANDRA BOSE, SUPREME COMMANDER, AZAD HIND FAUJ

[Indian National Army]

In the interests of the Indian Independence Movement and of the Azad Hind Fauj I have taken over the direct command of our Army from this day.

This is for me a matter of joy and pride because for an Indian there can be no greater honour than to be the Commander of India's Army of Liberation. But I am conscious of the magnitude of the task that I have undertaken and I feel weighed down with a sense of responsibility. I pray that God may give me the necessary strength to fulfil my duty to Indians, under all circumstances, however difficult or trying they may be. I regard myself as the servant of 30 crores of my countrymen who profess different religious faiths. I am determined to discharge

my duties in such a manner that the interests of these 38 crores may be safe in my hands and every single Indian will have reason to put complete trust in me. It is only on the basis of undiluted nationalism and of perfect justice and impartiality that India's Army of Liberation can be built up. In the coming struggle for the emancipation of our motherland, for the establishment of a Government of free India, based on the goodwill of 38 crores of Indians and for creation of a permanent army which will guarantee Indian Independence for all times, the Azad Hind Fauj has a vital role to play. To fulfil this role, we must weld ourselves into an army that will have only one goal, namely, the freedom of Indians and only one Will, namely, to do or die in the cause of India's freedom. When we stand, the Azad Hind Fauj has to be like a wall of granite, when we march the Azad Hind Fauj has to be like a steam-roller. Our task is not an easy one; the war will be long and hard, but I have complete faith in the justice and in the invincibility of our cause. 38 crores of human beings who form about one-fifth of the human race have a right to be free and they are now prepared to pay the price of freedom. There is consequently no power on earth that can deprive us of our birthright of liberty any longer. Comrades 'Officers and men'! With your unstinted support and unflinching loyalty Azad Hind Fauj will become the instrument of India's Liberation. Ultimate Victory will certainly be ours, I assure you. Our work has already begun. With the slogan, 'Onward to Delhi' on our lips, let us continue to labour and to fight till our National Flag flies over the Viceroy's House in New Delhi, and the Azad Hind Fauj holds its victory parade inside the ancient Red Fortress of the Indian Metropolis. (Sd) Subhas Chandra Bose, Supreme Commander (Sipah Salar)

General H. Q., Indian National Army, 25th August 1943

NATIONAL ANTHEM

Exhibit III

Subh sukh chain ki barkha barse Bharat bhag hai jaga,
Punjab Sindh Gujrat Maratha Dravid Utkal Banga
Chanchal Sagar Bindh Himala neela Jamna Ganga,

Tere nit gun gae,
Tujhe jeewan pae,
Sab tan pae asha,

Suraj ban kar jag par chamke Bharat nam Subhaga,
Jai-ya ho, Jai-ya ho, Jai-ya ho,
Jai-ya Jai-ya Jai-ya Jai-ya ho!

Sub ki dil men piit basae teri mithi bani,
Hai sube ke rahne wale har mazhab ke prani,
Sab bhed-o-farak mita ke,
Sab god me teri ake,
Goondhen prem ki mala,

Suraj ban kar jag par chamke Bharat Nam subhaga,
Jai-ya ho, Jai-ya ho, Jai-ya ho,
Jai-ya Jai-ya Jai-ya Jai-ya ho!

Subah severe pankh pakheru tere hi gun gaen,
Bas bhari bhrapoor hawaen jeewan men rut laen,
Sab mil kar Hind Pukare,
Jai Azad Hind ke nare,
Piara desh hamara,

Suraj ban kar jag par chamke Bharat nam subhaga,
Jai-ya ho, Jai-ya ho, Jai-ya ho,
Jai-ya Jai-ya Jai-ya Jai-ya ho!
Bharat nam subhoga!

October 22, 1943

T R I A L OF MUHAMMAD BAHADUR SHAH, Ex KING OF DELHI

Proceedings of an European Military Commission assembled at Delhi on the 27th day of January 1858 by order of Major-General Penny C B Commanding the Division, pursuant to instructions from Sir John Lawrence, Chief Commissioner of the Punjab for the trial of such Prisoners as may be duly brought before it

PRESIDENT

Lieutenant Colonel Dawes Artillery

MEMBERS

Major Palmer H.M. 8 60th Regiment.

Major Redmond H M 8 61st Regiment

Major Sawyers H M. 8 6th Carabineers.

Captain Rothney, 4th Sikh Infantry

INTERPRETER.

Mr James Murphy

PROSECUTOR FOR GOVERNMENT

Major F J Harriott Deputy Judge Advocate General.

The Court assembled in the Special Hall of Audience in the Palace at Delhi at 11 o'clock, on the morning of the 27th of January 1858

The Charge-Sheet

The charge sheet against Muhammad Bahadur Shah reads as follows —

- (1) For that he, being a pensioner of the British Government in India, did at Delhi at various times between the 10th of May and 1st of October 1857 encourage aid and abet Muhammad Bakht Khan Subedar of the Regiment of Artillery and other native commissioned officers and soldiers, unknown of the East India Company's Army in the crimes of mutiny and rebellion against the State.
- (2) For having at Delhi at various times between the 10th of May and 1st of October 1857 encouraged aided and abetted Mirza Mughal his own son a subject of the British Government in India and other unknown inhabitants of Delhi and of the North West Provinces of India also subjects of the said British Government to rebel and wage war against the State.
- (3) For that, he being a subject of the British Government of India and not regarding the duty of his allegiance, did, at Delhi on the 11th May 1857, or thereabouts, as a traitor against the State, proclaim and declare himself the reigning King and Sovereign of India and did then and there traitorously seize and take unlawful possession of the city of Delhi and did moreover at various times between the 10th of May and 1st of October 1857 as such false traitor aforesaid treasonably conspire consult and agree with Mirza Mughal, his own son and with Muhi Bakht Khan and diverse and other false traitors unknown to raise levy and make insurrection rebellion and war against the State and further to fulfil and protect his treasonable design of overthrowing and destroying the British Government in India did assemble arm'd forces at Delhi and send them forth to fight and wage war against the said Government

(4) For that, he, at Delhi on the 16th of May 1857, or thereabout, did, within the precincts of the palace at Delhi, feloniously cause or became accessory to the murder of 49 persons, chiefly women and children of European descent, and did moreover between the 10th of May and 1st of October 1857, encourage and abet diverse soldiers and others in murdering European officers and other English subjects including women and children, both by giving and promising for such murderers service, advancement and distinction, and further, that he issued orders to different native Rulers having local authority in India to slay and murder Christians and English people, whenever and wherever found on their territories, the whole or any part of such conduct being a heinous offence under Act XVI of 1857 of the Legislative Council in India.

TRANSLATION OF THE WRITTEN DEFENCE PUT IN BY BAHADUR SHAH, EX-KING OF DELHI

The real facts are as follows I had no intelligence on the subject previously to the day of the outbreak. About 8 o'clock a m, the mutinous troopers suddenly arrived and set up a noisy clamour under the palace windows, saying they had come from Meerut after killing all the English there, and stating, as their reason for having done so, that they had been required to bite with their teeth, cartridges greased with the fat of oxen and swine, in open violation of the caste of both Hindus and Mussulmans When I heard this, I immediately had the gates under the palace windows closed, and sent intelligence to the Commandant of the Palace Guards. On receiving the message, he came personally, and wishing to go out where the troopers were collected, requested that the gate might be opened I kept him from his purpose, however, and said something to the troopers, who then went away After this, the Commandant of the Palace Guards left me, saying he would make arrangements immediately to put down the disturbance Very shortly after, Mr Fraser sent a message for two guns, and the Commandant another for two palanquins, saying that two ladies were staying with him, and requesting that I would have them taken to and concealed in my private female apartments I sent the palanquins immediately, and gave orders at the same time that the guns should also be taken. Very soon after this, I heard that before the palanquins could reach them, Mr Fraser, the Commandant of the Palace Guards, and the ladies had all been killed. Not long after this the mutinous soldiery rushed into the Hall of Special Audience, crowding into the Courtyard, the Hall of Special Audience itself, and the Hall of Devotion, surrounding me completely and placing sentries on all sides I asked them what their object was, and begged of them to go away In reply they told me to remain a quiet spectator, saying that they had staked their lives, and would now do all that might be in their power Fearing that I should be killed, I kept quiet and went to my own private apartments Near evening, these traitors brought as prisoners some European men and women whom they had found in the Magazine, and resolved on killing them I had recourse to persuasion, and succeeded in getting their lives spared for the time The mutinous soldiers, however, kept them prisoners in their own custody Subsequently, on two occasions, they again determined on killing these Europeans, when I again restrained them from their purpose by entreaty and persuasion, and saved the lives of the prisoners However, on this last occasion, though I again did all in my power to reason with the rebellious soldiery they would not heed me, and carried out their purpose of slaying these poor people I gave no orders for this slaughter Mirza Moghal, Mirza Khair Sultan, Mirza Abulbahr, and Basant, one of my own personal attendants, who had leagued with the soldiery, may have made use of my name, but I have no knowledge that they did, nor do I know that my own armed retainers, acting independently of my orders, joined in the slaughter If they did so, they may have been urged on to it by Mirza Moghal Even after the massacre, no one gave me any information

regarding it. In reference to what some of the witnesses have said in evidence regarding my servants having joined in killing Mr Fraser and the Commandant of the Palace Guards, I make the same answer viz. that I gave them no orders. That if they did so they did it of their own free will. I had no knowledge of it, and this matter also was not communicated to me. I swear by God, who is my witness, that I did not give orders for the death of Mr Fraser or of any other European. Mukund Lal and other witnesses in saying that I did have spoken falsely. That Mirza Moghal and Mirza Khair Sultan may have given orders would not be strange, for they had leagued with the revolted soldiery. After these occurrences, the rebellious troops brought Mirza Moghal, Mirza Khair Sultan and Abulbakt, and said they wished to have them as their officers. In the first instance, I rejected their request, but when the soldiery persisted and Mirza Moghal in anger went off to his mother's house, from dread of the soldiers I kept quiet in the matter, and then by mutual consent on both sides, Mirza Moghal was appointed to be Commander-in-Chief of the army. As regards the orders under my seal, and under my signature, the real state of the case is, that from the day the soldiery came and killed the European officers, and made me a prisoner I remained in their power as such. All papers they thought fit, they caused to be prepared and bringing them to me, compelled me to affix my seal. Sometimes they brought the rough drafts of orders and had fair copies of them made by my secretary. At other times, they brought the original letters intended for despatch, and left copies of them in the office. Hence several rough drafts in a diversity of hands have been filed in the proceedings. Frequently they had the seal impressed on the outside of empty unaddressed envelopes. There is no knowing what papers they sent in these or to whom they sent them. There is a petition in the proceedings without an address from Mukund Lal to some unknown party, in which a list is given on the number of orders issued on that date. In this catalogue it is distinctly specified that so many orders were written under the direction of so and so - so many others under that of such a one; and so on, but not one is ascribed to me. Accordingly this also proves that whoever wished had orders written as he chose, without my authority, not even acquainting me with their purport while I and my secretary being in jeopardy of our lives, could not dare to say anything in the matter. It was just the same case as regards the petitions bearing orders in my own writing. Whenever the soldiers or Mirza Moghal, or Mirza Khair Sultan, or Abulbakt, brought a petition, they invariably came accompanied by the officers of the army and brought the order they desired written on a separate piece of paper and compelled me to transcribe it with my own hand on the petition. Matters went so far in this way that they used to say so that I might hear them, that those who would not attend to their wishes would be made to repent their conduct and for fear of them I could say nothing. Moreover they used to accuse my servants of sending letters to and of keeping in league with the English more particularly the physician Ahsan Ulla Khan, Mahbub Ali Khan and the queen Zinat Mahall whom they said they would kill for doing so. Thus one day they did actually plunder the physician's house and made him a prisoner intending to kill him but refrained from their purpose only after much entreaty and supplication, keeping him a prisoner however, still. After this, they placed others of my servants in arrest for instance Shamshir ud-dowlat the father of the queen Zinat Mahall. They even declared they would depose me, and father of the queen Zinat Mahall. They even declared they would depose me, and make Mirza Moghal king. It is a matter for patient and just consideration then, what power in any way did I possess or what reason had I to be satisfied with them? The officers of the army went even so far as to require that I should make over the queen Zinat Mahall to them that they might keep her a prisoner, saying she maintained friendly relations with the English. Now if I was in the full exercise of power and authority, should I have permitted the physician Ahsan Ulla Khan's and Mahbub Ali Khan's imprisonment, and should I have

allowed the physician's house to be plundered ? The mutinous soldiery had established a court in which all matters were deliberated on, and such measures as, after deliberation, were sanctioned by this council, they adopted, but I never took any part in their conferences. Thus, without my knowledge or orders, they plundered, not only many individuals, but several entire streets, plundering, robbing, killing and imprisoning all they chose, and forcibly extorting whatever sums of money they thought fit from the merchants and other respectable residents of the city, and appropriating such exactions to their own private purposes. All that has been done, was done by that rebellious army. I was in their power, what could I do ? They came suddenly and made me a prisoner, I was helpless, and constrained by my fears, I did whatever they required, otherwise they would immediately have killed me. This is universally known. I found myself in such a predicament that I was weary of my life, while my officials had no hopes of theirs being spared. In this state of things, I resolved to accept poverty, and adopted the garb, coloured with red earth, of a religious mendicant, intending to go first to the shrine of the Kutab Sahib, thence to Ajmer, and from Ajmer eventually to Mecca, but the army would not allow me, it was the soldiery who plundered the Government magazine and treasury, and did what they pleased. I took nothing from them, nor did they bring any of the plunder to me. They, one day, went to the house of the queen Zinat Mahall, intending to plunder it, but did not succeed in breaking open the door. It should accordingly be considered if they were subservient to my authority, or had I been in league with them, how would these things have occurred ? In addition to all this it is worthy of consideration that no person demands the wife of the *poorest* man, saying "Give her to me, I will make her a prisoner." As regards the Abyssinian, Kambar, he obtained leave from me to go on a pilgrimage to Mecca. I did not send him to Persia, nor did I send any letters by him to the Persian King. Some one has falsely circulated this story, Muhammad Durweshe's petition is no document of mine that it should be trusted if any enemy of mine or of the Mian (a term similar or equivalent to 'His Honor' or 'His Reverence') Hasan Askari has sent this petition, it ought not to be relied on. As regards the behaviour of that rebellious army, it may be stated that they never saluted me even, nor showed me any other mark of respect. They used to walk into the Hall of Special Audience and the Hall of Devotion with their shoes on. What confidence could I place in troops who had murdered their own masters ? In the same way that they murdered them, they made me a prisoner, and tyrannised over me, keeping me on in order to make use of my name as a sanction for their acts. Seeing that these troops killed their own officers, of high authority and power, how was I without an army, without treasure, without stores of ammunition, without artillery, to have resisted them, or make arrangements against them ? But I never gave them aid in any shape. When the mutinous troopers first arrived, the gateway under the palace windows being in my power, I had it closed. I sent for the Commandant of the Palace Guards and the Agent to the Lieutenant-Governor. Moreover, I dispatched a letter the same night by camel express to His Honor the Lieutenant-Governor of Agra, acquainting him with the calamitous occurrences which had happened here. So long as I had power, I did all that I was able. I did not go out in procession of my own free will. I was in the power of the soldiery and they forcibly did what they pleased. The few servants I engaged, I engaged for the protection of my own life, in consequence of my fears of the revolted and rebellious troops. When these troops prepared to abscond, finding an opportunity, I got away secretly under the palace windows, and went and stayed in Humayun's Mausoleum. From this place I was summoned with a guarantee that my life should be spared, and I at once placed myself under the protection of the Government. The mutinous troops wished to take me with them, but I would not go. In all the above which I have caused to be written from my own dictation, there is not the smallest falsehood nor deviation from truth. God

knows, and is my witness that I have written only what is strictly true, and the whole of what I can remember. I told you with an oath, at the commencement, that I would write only the truth without addition or deficiency and so I have now done.

Attested with autograph cypher

Postscript.—With reference to the copy of an order to Mirza Moghal complaining of the acts of the soldiery and explaining my resolve, in consequence, to go to the shrine of the Khwaja Sahib and thence to Mecca, which has been filed in the proceedings I declare that I have no recollection of such an order having been issued. The order in question is in the Urdu tongue contrary to the rule in my Secretariat office where all such papers were written in Persian and I accordingly do not know how and where it was prepared. It appears that seeing I was thoroughly wearied by the army, and that I had in consequence resolved on discarding the world accepting poverty and going to Mecca, Mirza Moghal must have had it written in his office and had my seal affixed to it. At all events my displeasure against the army as well as my perfect helplessness is proved by the orders in question also which corroborates all that I have said above. As regards the other documents, besides the one just referred to viz the copies of the massive to the address of Rajah Gulab Singh. Bakht Khan's petition, my autograph order on it attested with my seal and other papers which have been filed in the proceedings I affirm that I have no recollection of them but I have already stated that the officers of the army caused whatever orders they chose, to be written without my knowledge and had them attested with my seal, and I feel convinced that these must be of the same kind, and that they must have compelled me to write with my hand the order they wished on Bakht Khan's petition, in the same way that they did in the case of every other petition.

Autograph cypher

THE JUDGE-ADVOCATE GENERAL'S ADDRESS

GENTLEMEN —It will be my object in the present address to collect the different facts which have been elicited in the course of these proceedings and to furnish them to you as far as possible in the order in which they originally occurred. Our investigation has involved enquiry over a period of several months when rebellion was rampant in this city and I trust we have succeeded in tracing with considerable minuteness many of the different events as they evolved themselves during the time to which I have referred. Our labours indeed have not had this limit or we should only have accomplished what might I think be termed the least important part of our duties. In immediate connection with the facts elicited are the charges on which the prisoner has been arraigned and though his former rank and royalty will doubtless add somewhat of temporary importance to the verdict which you will this day be called upon to record yet whether it be one of acquittal or conviction, it must I imagine, prove light in the balance when weighed against those more monstrous points to which so much attention has been and for a long time, will still be directed. I, of course allude to the causes either remote or immediate which gave rise to a revolt unparalleled in the annals of history either for the savagery which has been its distinctive feature or for the suddenness with which elements hitherto deemed utterly discordant on the score of religion have united themselves in a common crusade against a faith which as regards the inhabitants of this country—whether Mohammedan or Hindu was certainly a most unaggressive one. I fear however the subject is still but imperfectly elucidated and I may perhaps be in error in attributing to a religious influence a movement which after all may prove to have been merely a political one—a struggle of the natives for power and place, by the expulsion from the country of a people alien in religion in blood in colour,

in habits, in feelings, and in everything. Whatever the final opinion on this subject may be, the questions, which as far as I am aware of have not as yet found a satisfactory solution are, by what circumstances was this most atrocious revolt, with its series of massacres brought about, and who were its prime original instigators? I feel sure the members of this Court will join with me in deeming that our proceedings do not furnish a full and complete answer to such questions, and why do they not?—I believe it is simply owing to the circumstance that any merely local investigation must be inadequate to collect evidence from the different quarters and sources, which are no doubt available elsewhere. We may still, however, hope that our efforts on this point have not been fruitless or unavailing,—if we cannot congratulate ourselves on an entire success, we may perhaps be allowed credit for a near approach to it. Few, I imagine, will peruse these voluminous proceedings without coming to the conclusion that intrigues and conspiracy have long been rife at this fostering Court of Delhi. Insignificant and contemptible as to any outward show of power, it would appear that this possessor of mere nominal royalty has ever been looked upon by Mohammedan fanaticism as the head and culminating star of its faith. In him have still been centred the hopes and aspirations of millions. They have looked up to him as the source of honour, and, more than this, he has proved the rallying point not only to Mohammedans, but to thousands of others with whom it was supposed that no bond of fanatical union could possibly be established. To throw the fullest light on a subject like this, is not the work of a day, or of a month, time, the great revealer of secrets, will doubtless, sooner or later, lay bare the springs from which a stream of so much evil and misery has flowed, but, till then we must be content with such views as our present investigation affords. That we have been able to unravel many of the secret workings of the conspirators will, I believe, be conceded.—But let me not anticipate. This is a point of our enquiry on which I propose to offer some observations hereafter; but a concise narrative of events will perhaps best suit the commencement of this address.

I may state then, that 85 men, non-commissioned and troopers, 3rd Light Cavalry, who were tried by General Court-Martial at Meerut in May last, for refusing their cartridges, had their sentence read to them and were ironed on the parade ground early on the morning of the 9th of May, and that the mutiny of the three native regiments at Meerut first openly developed itself at about 1/2 past 6 o'clock on the evening of the 10th of May, during which interval of nearly 36 hours there, of course, plenty of opportunities for interchange of communications between the native troops who first rebelled at Meerut, and those who joined them at this station. To travel from one place to another by coach used ordinarily to take about five hours, and that the mutineers availed themselves of this facility of mutual intercourse, has, I think, been clearly established by the evidence of Captain Tytler. It appears from his statement that a coach, full of these Meerut mutineers, came on Sunday evening to the lines of the 38th Native Infantry, doubtless to prepare the sepoys of this station for the arrival and suitable reception, on Monday morning, of their rebel comrades, and although we may not possess positive evidence to the fact, yet it may fairly be presumed that Sunday evening was not the first occasion that these plotters of evil held their secret and sinister councils. cavalry at Meerut, had come to any decision on their case, a compact had been entered in to the effect that if the use of greased cartridges was persisted in, the troops at Meerut and Delhi would unite, and at once unfurl the standard of revolt, and so fully had this arrangement been perfected and agreed on that it is related that the sepoy guards at the gate of the palace on Sunday evening, made no secret of their intentions, but spoke openly among themselves of what they expected to occur on the morrow. To understand the merits and demerits of the whole transaction, it must be recollected that, at the time when these resolutions were arrived at, there was not a single greased cartridge in the magazines of either of the

three native regiments at Meerut, nor, as far as I have been informed of those at Delhi either. It must be further borne in mind that the native soldiers themselves were the persons who were perhaps the best informed on these points—that the cartridges for practice had, from time immemorial, been manufactured in the regimental magazines by persons of their own colour, creed and religious persuasion—that it was absolutely impossible to palm off on them a spurious article—that the regimental khallasies who were employed in making these cartridges, must have at once discovered their impurity if such had really existed—that, in fact, objectionable cartridges, (I mean such as would affect the religious prejudices of either Mussalman or Hindu), could not possibly have been made in their regimental magazines as in such case the very men to be employed in their manufacture would have refused their work—but, more than this, let it be remembered that the Mohammedan has no caste, that even the hybrid such as the Mohammedans of Central India has become half Mussalman and half Hindu, does not pretend to a loss of religion, even from touching pork. Who is there amongst us that has not and does not almost daily witness these Mohammedans, in the capacity of table servants, carrying plates and dishes which openly contain the very substance which in reference to the cartridges has been made the pretence and the stumbling block of their offence. Even if we were to admit that all the cartridges were thoroughly saturated with pig's and with cow's fat, still what real valid objection on the score of their religion could the Mohammedan sepoys have had in using them? Their brothers and other relatives in the private service of officers never hesitate to handle or cook the dishes which they are required to bring to our tables. The objections of the Mohammedan sepoys on this head are so transparently false that it can hardly be a matter of wonder that not one man of sense or respectability among them appears ever to have come forward to seek information or satisfy himself as to the truth or falsity of rumours so industriously circulated about these cartridges that were to be the means of depriving them of their faith. Some few—very few—honourable exceptions have certainly held aloof from and openly repudiated the conduct of their brethren but such men have wanted neither guarantees nor explanations in regard to a matter which was patent to all, but have come to their own conclusions on a subject where error had no abiding place and mistake is incredible. That neither Mussalman nor Hindu had any honest objection to the use of any of the cartridges at Meerut or at Delhi, is sufficiently proved by the eagerness with which they used them, when their aim and object was the murder of their European officers or when united under the banners of the Prisoner at your bar they for months constantly went forth to fight against the power to which they owed fealty and allegiance. Among the very numerous petitions which have been brought under your notice during these proceedings, it may have struck the Court as very strange that there is not a single one in which the slightest allusion is made to what the sepoys would have us believe to be their great and particular grievance. We have had upwards of 180 petitions to the recovery of a mule or a crack in a horse's hoof—and each thought worthy of the sign manual of royalty—but in the free indulgence of such correspondence when they evidently unburdened their minds to their adopted sovereign, and were certainly not restrained by any delicacy of language or of feeling from venting their acerbity against their quondam European masters we can find no trace of the original sin no grease spot staining these effusions of disloyalty. How instructive is it that among themselves and when applying to us such language as 'damnable hell doomed infidels, they apparently forego the first specific offence which they would have us believe has led them to mutiny and rebellion and the perpetration of crimes at which humanity shudders! When with each other and as they conceived safe from intrusion and enquiries of British officers that insurmountable obstacle to their fidelity and allegiance the greased cartridge is apparently, altogether lost

sight of Not a whisper is heard of a grievance which, if a substantial one, must ever have been uppermost in the memories of all,—must have been continually ranking in their minds and embittering their thoughts,—must have influenced them in their blood-thirstiness,—and, to themselves, have been their only extenuation for crimes such as may well exclude them from mercy. What a contrast this to their speeches when uttered with a prospect of reaching European ears!—Greased cartridges are then always brought forward, the use of them forms the one continuous nightmare of the sepoy's existence. Really, if we reflect seriously on this,—if we remember that in reality there was not a single greased cartridge among either of the three regiments which first broke out into mutiny, murdering, not only men, but unoffending women and children, and that the sepoys were perfectly aware of this ;—when we call to mind that, even if greased cartridges had existed, and the use of them been required at the hands of these miscreants, not one of the Mohammedans at any rate could possibly have been injured thereby in any caste prejudice, or placed even in temporary difficulty with regard to his religious tenets,—when to this we add, what is well known to every one in India, whether Hindu, Mohammedan or European, viz., that the native soldiers had but to ask for his discharge, and that, in time of peace, it is at once granted to him, without enquiry or difficulty of any kind,—it seems beyond the bounds of reason to imagine that these men were drawn into acts of such revolting atrocity by any grievance either real or imagined. Let the chimeras, the disturbed dreams of fanaticism, of wickedness, or of folly have been what they may,—let the instigations to evil have been as industrious as possible,—and then allow that the sepoys to be worked upon, were as credulous as the grossest ignorance could make them,—still, if the greased cartridge had been the only weapon the tamperers had to work with,—but the one envenomed shaft in their quiver—how easy was the remedy! It required no depth of knowledge, no philosopher to inform them, that they could at once escape from every possible perplexity by simply applying for their discharge. I know not, Gentlemen, what conclusion you may arrive at on this much vexed question, but, after pondering it in every way in which my reason has presented it to me, I am obliged to infer that something deeper and more powerful than the use of greased cartridges has been resorted to.

The machinery that has set in motion such an amount of mutiny and murder, that has made its vibrations felt almost at one and the same moment from one end of India to the other, must have been prepared, if not with foreseeing wisdom, yet with awful craft, and most successful and commanding subtlety. We must recollect, too, in considering this subject, that in many of the places where the native troops have risen against their European officers, there was no pretext even in reference to cartridges at all. Members of these mutinied, apparently, because they thought there was a favourable opportunity of doing so,—because they were a hundred to one against those in authority, and fancied they might pillage, plunder and massacre not only with impunity but with advantage. Is it possible that such fearful results as these could have at once developed themselves, had the native army previous to the cartridge question been in a sound and well affected state? Can any one imagine that, that rancorous widespread enmity, of which we have lately had such terrible proofs, has been the result of feelings suddenly and accidentally irritated? Does it appear consistent with the natural order of events, that such intense malignity should start into existence on one single provocation? Or can it be reconciled with the instincts, the traditions, or the idiosyncracies of the Hindus, that they should, recklessly, without enquiry, and without thought, desire to imbrue their hands in human blood, casting aside the pecuniary and other advantages that bound them to the cause of order and of the Government? Or, more than this, can it be imagined that the three regiments at Meerut, even when joined by those at

Delhi, could have conceived an idea so daring as that overthrowing by themselves the British Government in India?

I think, Gentlemen, every one must allow that if we had no other evidence of a plot no testimony indicative of a previous conspiracy the very nature of the outbreak itself must have convinced us of the existence of one. In the moral, as in the physical world there must be cause and effect, and the horrible butcheries of the past year would remain an anomaly and a mystery for ever, could we trace them to nothing more occult and baneful than a cartridge of any kind. It will be observed that this point of the cartridges so openly and frequently insisted on, at Meerut and elsewhere, before the 10th of May, gradually becomes more and more indistinct, as the plot gathers strength and matures itself and after furnishing the mutineers with their first war cry at Delhi, it seems to have answered its purpose, and thenceforward was allowed to sink into disuse and neglect. With little or no vitality at starting, it soon died a natural death and was succeeded by a reality of purpose, and a fixedness of resolve, that would have been worthy of a better cause. If we review the actions and whole conduct of these mutineers, we shall soon see that, from the very commencement, they bear the impress of cunning and of secret combination. For instance, 85 of their comrades were ironed before them and sent off to jail in their presence on the morning of the 9th of May but this occasioned no outbreak of fury. Not a sound or token of dissatisfaction escaped from the men, who then and long before, must have had rebellion in their hearts; no gesture indicative of sympathy with the culprits was exhibited by any in fact, as far as appearances could be trusted the infantry regiments at Meerut, and the remaining portion of the 3rd Cavalry were as obedient and loyal as could possibly be desired and this deception was successfully resorted to till their plans were matured and the moment for open revolt had arrived. The night of the 9th of May twelve hours after the imprisonment of the 3rd Cavalry mutineers had taken place, was as favourable an opportunity as the night following for a march upon the nearest magazine; but there had not then been time for preparing the Delhi sepoy for a movement which the progress of events at Meerut had doubtless precipitated sooner than their first calculations had led them to expect. Hence the necessity for communicating afresh with Delhi and acquainting the sepoys there with the drama that was to be enacted on Monday the 11th. That such was done is established by the evidence of Captain Tyler for it would be difficult to assign any other motive for a carriage full of sepoys coming over from Meerut on Sunday evening, and driving straight into the lines of the 38th Native Infantry.

Again we can perceive in the very hour chosen for the outbreak at Meerut the same evidence of cunning and of craft. The plan too of the Meerut cantonments gave considerable facilities for carrying out their plot. The native lines are so completely separated from that portion of the cantonments where the European troops reside that the disturbance and uproar attendant even upon open mutiny could not be heard or even known, from one to the other until specially communicated. Officers may naturally have been too intent on quelling the rebellion of their men to think of officially reporting it. Be this as it may there would be some delay in turning out and supplying the Europeans with cartridges assembling their officers and marching down a distance of not less than two miles so that taking one delay with another the mutineers might fairly calculate considering it was an utter surprise to all on 1½ hours of safe and uninterrupted progress and as the outbreak commenced at ½ past six this would have secured them darkness and comparative security for their further operations. This was what in effect actually took place. On the European reaching the native lines, it was already dark no sepoys were to be seen and no one could tell whither they had gone. Subsequent enquiry revealed that guided by the instinct of cunning the rebels had not at first taken the direct or main road to Delhi, neither had they left Meerut in militia

formation, but as dusk had set in, had gone forth in parties of 5, 6 or 10 to their fixed place of assembly. This was judicious for their departure from Meerut, but would have been highly impolitic for their entry into Delhi, where there were no European troops to avoid. Something more imposing and demonstrative was required here; and accordingly we find them crossing to bridge simultaneously, massed in columns, and in complete military array, with a portion of the cavalry sent forward as a regular advanced guard.

It is on this occasion that we first prove the mutineers in immediate connection with the prisoner at your bar. The first point to which they turn—the first person to whom they address themselves, is the titular majesty of Delhi. This circumstance has much significance, and, at any rate, tends to show that previous concert existed between them. The Prisoner's complicity, however, was, immediately after, openly to commence. Scarcely had the very serious nature of the outbreak had time to develop itself, than his own special servants—in the very precincts of his palace—and almost, as it were, before his own eyes, rush to imbrue their hands in the blood of every European they can meet with, and, when, we remember that two of these were young and delicate women who could have given no offence—whose sex and age might have tamed any hearts less pitiless than those of the human demons who destroyed them,—we are able to realize some slight portion of the horrible unnatural influences that appear innate to Mohammedan treachery. How otherwise was it possible that education—the pride of royal ancestry—a life of tranquil ease and comparative refinement—should not have exempted this old and grey-headed man from all connection with deeds which seem too barbarous for the very outcasts of humanity, or even for the untamed but less savage denizens of the jungle.

We stop to enquire whether it has been proved in this Court, and will be repeated in after years, that the last **King of the imperial house of Taimur** was an accomplice in this villainy. The circumstances shall now be fairly stated. These murders were committed in the broad glare of day, before dozens of witnesses, and without the slightest attempt at concealment. They were perpetrated, as has been already stated, by the prisoners' own retainers, and within the limits of his palace, where be it remembered even under the **Company's Government, his jurisdiction was paramount**. I shall not, however, attempt to infer that these murders must have been previously sanctioned by the prisoner,—mere inferences, on such a point cannot be accepted in a Court of Justice. I prefer to quote from the evidence. It is Ahsan Ulla Khan, the physician, who is speaking, and who says, that at the time he referred to, he and Ghulam Abbas, the attorney in Court, were with the King, when it was told them that the troopers had killed Mr Fraser, and had gone up to Captain Douglas to kill him, and that this was instantly confirmed by the return of the palkee bearers, who told them that they had witnessed Mr Fraser's murder, that his body was in the gateway, and that the troopers had ascended to the upper building for the purpose of murdering those there. Why the witness suppresses all mention of the prominent part the King's own servants took in these massacres, can easily be imagined. In a subsequent part of his examination, he even asserts that it was not generally known the King's servants joined in these murders, nay more, that it was not generally known who committed them! Such is the evasion of the King's own physician, who doubtless was aware of the importance that would necessarily attach to this point. It was not generally known who committed these murders! and, yet, at this lapse of time, we have had no difficulty in tracing the individuals, and ascertaining their names. It was not generally known that the King's own servants were the murderers! and yet we find this very circumstance prominently and specifically mentioned at the time in the native newspapers of the city. I need not, after this, recapitulate the evidence of all those who have clearly

and satisfactorily proved that the King's servants were the murderers; for their testimony stands unshaken and unrefuted. It will amply suffice if I quote the statement of one of them, and which is as follows—'At this time Mr Fraser remained below, trying to suppress "the disturbance, and while thus engaged I noticed of the King's servants cut at him with swords till he was dead. One of Mr Fraser's murderers was an Abyssinian. After this, they made a rush to the upper apartments, when I immediately ran round by another door and closed the door at the top of the stairs. I was engaged in shutting all the doors, when the crowd found entrance by the southern stair and having forced one of the doors on that side, came and gave admission to the men who had assisted in murdering Mr Fraser. These immediately rushed into the apartments where the gentlemen, viz., Captain Douglas, Mr Hutchinson and Mr Jennings had retired and attacking them with swords at once murdered them and the two young ladies. On this I ran down the staircase. As I got to the bottom I was laid hold of by one Mundoh a bearer in the service of the King who said, 'Tell me where Captain Douglas is, you have concealed him. He forced me upstairs with him I said 'you have yourselves killed all the gentlemen already' but on reaching the room where Captain Douglas was I saw that he was not quite dead. Mundoh perceiving this also hit him with a bludgeon on the forehead, and killed him immediately.' Having now established that the murderers of these ladies were the special servants of the Prisoner it will be well to revert to the testimony of the physician, Ahsan Ulla Khan, and to ascertain from him the steps the prisoner took on the murders being reported to him. The only order he gave on this occasion appears to have been to close the gates of his palace, and we naturally require whether this was for the purpose of preventing the escape of the murderers. The evidence distinctly proves that it was not. The physician being further interrogated is obliged to confess that the prisoner took no steps whatever either to discover to secure, or to punish the guilty and attributes it to there being much confusion at the time but if the King's authority had actually been set aside and by his own servants too this would have been the most forcible of all reasons for immediately re-establishing it by at once bringing the offenders to justice. That this was not done we have been already informed and we can only account for it on the supposition that these acts of the prisoner's servants if not instigated by himself had yet actually anticipated his wishes. We are thus perfectly prepared for what is to follow viz. that no servant was ever dismissed and not the slightest investigation or enquiry was ever instituted. In fact, in the words of the question put to the witness the King continued these murderers both in his pay and in employment and this too as we have seen when the very newspapers of the day gave information against them. After this, is it necessary to question whether he adopted these deeds as his own or not? I need not quote what may be the law of the land on such a point for there is yet a higher law which must acquit him or condemn him the law of conscience and of sense, that law which every one who hears me can apply and which carries with it a verdict more terrible than that which is pronounced in mere conformity to legal codes or military legislation it is a law that does not depend upon local constitutions upon human institutes or religious creeds it is a law fixed in the heart of man by his Maker and can it now here be set aside?

Perhaps it may be time to turn our attention to what was doing at the magazine and to trace the further steps of the mutineers in that direction. Captain Forrest has told us that it was about 9 o'clock in the morning when the main body of the native troops from Meerut was passing over the bridge in military formation (that is in sub-divisions of companies,) with fixed bayonets and sloped arms the cavalry being in front. It was actually in less than one hour after this that a Subadar of the 38th Native Infantry who was commanding the magazine guard outside

the gate, informed them that the King of Delhi had sent a guard to take possession of the magazine, and to bring all the Europeans there up to his palace, and that if they did not consent to this, none of them were to be allowed to leave the magazine. Captain Forrest adds that he did not see the guard at this time, but that he saw the man who had brought this message, and he was a well-dressed Mussalman. Nor was this all, for shortly after the above, a native officer in the King's service arrived with a strong guard of the King's own soldiers in their uniform, and told the above-mentioned Subedar and the non-commissioned officers that he was sent down by the King to relieve them of duty.

We thus see with what alertness and despatch this most important object, the seizure of the magazine, was attempted. Is it, however, to be believed that such was the ready, immediate, and, as it were, impulsive decision of the King, or of those who formed the Court? To attribute to them anything of this nature, would be to give them credit for a coolness of calculation, combined with a quickness of apprehension, such as pertains only to the more gifted of mankind. The scope and entire progress of the scheme speak loudly of a plan previously arranged, and of deliberations long matured by the counsels of many. Indeed, it is difficult to conceive that any one, not previously initiated in the secret, could, on the moment, so promptly and so effectually have entered upon and adopted the details necessary for carrying it out. You will recollect the extreme importance of the decision, the magnitude of the interests at stake. You will call to mind the cogent reasons and the numerous arguments that would naturally array themselves against adopting so headlong and precipitate a measure. It was, in fact, an invitation to a King to league himself with ruffians and with cut-throats. Any inducement or prospective advantage that they could hold out to him was faint and almost imperceptible compared with the open risk which he was to encounter. By embarking in so forlorn a cause, he imperilled everything, his own life, and those all belonging to him and for what? The distant glimmer of a crown, which common reason, or the slightest consideration, would have convinced him was a mere *ignis fatuus* — a mockery of a sceptre, that would evade his grasp. Are we to imagine that it was under such circumstances that this weak and tremulous old man seized and improved his occasion, and with all the rapid instinct of determination, directed his own troops upon the magazine, to establish himself there as the one point of primary and most vital importance and this too in the first moment of a surprise when nothing but riot and disorder reigned supreme? Or are we to suppose that there was a secret and a deeper knowledge of what the other portions of the army were already ripe for, and that the five or six regiments to commence with, were but the instalments of those that were to follow? Or, if such previous understanding and collusion did not exist either with the King or any of those immediately about him, are we to attribute to superstition and the pretended revelation of dreams, circumstances which scarcely admit of satisfactory solution by any more sober process? We have all heard, in this Court, of the vision of a hurricane that was to arise from the West with a great flood of water devastating the whole country, but bearing up on its surges this descendant of ancient royalty, and that this vision, as interpreted by Hasan Askari the priest, signified annihilation to the English infidels by the power of the King of Persia, who was to restore sovereignty to the heirs of the throne of Hindustan. Was it a reliance upon this, that expedited the otherwise tardy movements of these Asiatics, and gave breadth and boldness to their decisions? I am aware that under other circumstances, and in any but an Eastern land, such unmeaning flights of a bewildered imagination would be too trivial to dwell upon,—too unsubstantial for the gravity of comment; but here, in seriously considering the nature and progress of an extensive military revolt, they obtrude themselves on the mind, as subjects capable of influencing for evil the destinies of thousands.

These observations have been elicited by the marked and unusual energy displayed in making the magazine the point of instant attack. It seems to me that such cannot be accounted for by conspiracy among the sepoys alone, for it was the King's own troops who were the first to seek possession, and the military and systematic way in which this was done, betrays the authority by which the orders were issued. There was no confusion here, no attempt at pillage non-commissioned officers were appointed to the separate guards for the different gates of the magazine, while another guard superintended the labourers who were removing the stores that happened to be outside. How could such decision such instant transformation from chaos to system and to order have resulted had not the King or some of his officials been entrusted with a sort of programme of events? How in fact, could the King's troops have been in readiness and preparation for such work without warning of some kind?

If I have not succeeded in tracing to the King himself a foreknowledge of the leading events that were to take place on Monday the 11th of May, I trust it had been made obvious that the secret was in the possession of some influential inmates of the palace. The babbling garrulity of the Prince Jawan Bakht sufficiently indicates this, for such is his joy at the anticipation of murdering the English, that he is unable to restrain his expressions of it. My chief object, however has been to render clear what I believe to be the truth, viz. that the conspiracy, from the very commencement was not confined to the sepoys and did not even originate with them but had its ramifications throughout the palace and the city and do not the murders which we have already adverted to tend to corroborate this fact? We have evidence that the mutineers of the 11th and 20th Regiments of Native Infantry before the magazine was exploded proceeded to attack and escalate it, and it is then for the first time that we find the King through his troops, acting in open alliance with these traitors to their government. From that moment there is no further disgust, and no attempt at concealment. Fairly launched into the stream of sedition he is hurried onward by the swollen flood which was not however to bear him, as he imagined, to the throne of Hindustan, but to leave him in its ebb a mere helpless wreck upon the sands.

I would here pause for a second to refer to Lieutenant Willoughby, and to the brave men under him, who for so long a time, held, against unnumbered odds, the magazine entrusted to them. One hardly knows which to admire most, the penetration and sagacity which at a glance, foresaw the possible necessity for its destruction, and made arrangements accordingly or the undaunted resolution with which the final sacrifice was accomplished. To do justice to such heroism will be the pleasing duty of the historian. I can merely give it a passing notice having to dilate on other matters more immediately connected with the proceeding before us.

With the explosion of the magazine at Delhi, every hope of stemming the torrent of rebellion seems to have vanished. Resistance had been there protracted to its utmost possible extent the sacrifice was a final one and thence forward the European community if in isolated spots still preserving the appearance of Government authority were left without one vestige of real power so that it soon became a duty to the state and to themselves to save their lives by a timely retreat. Delhi was consequently abandoned to the miscreants who had in the short space of 24 hours stained themselves with crimes which can scarcely be equalled in all the catalogues of bygone iniquity. It is now we find that the King coming personally forward as the chief actor in that great drama which had more than England and Europe for its spectators: the progress of which was watched with such absorbing interest every where by the antagonistic powers of civilization and of barbarism. The evidence shows that on the afternoon of the 11th of May, the King having entered the

Hall of Special Audience, seated himself in a chair, when the soldiery—officers and all—came forward one by one and bowed their heads before him, asking him to place his hands on them. The King did so, and each then withdrew, saying whatever came into his mind. The witness, viz, Ghulam Abbas, the prisoner's attorney in Court, informs us that this ceremony of the King putting his hands on the heads of the soldiery was equivalent to accepting their allegiance and services: and he further states, that though he is not aware of any regular proclamation having been made in Delhi in reference to the King assuming the reins of governments, yet that such may have been done without his hearing of it, but that on the very day of the outbreak the King's authority was established, and that night a royal salute was fired of about 21 guns.

These matters bring us to the charges against the prisoner, and it may perhaps be as well now to consider them, not so much in regard to dates as the sequence in which they have been drawn up. The first charge against Muhammad Bahadur Shah, Ex-King of Delhi is "For that he, being a pensioner of the British Government in India, did, at Delhi, at various times between the 10th of May and 1st of October 1857, encourage, aid, and abet Muhammad Bakht Khan, Subedar of the Regiment of Artillery, and, divers others, native commissioned officers and Rebellion against the State." I am not going to weary the Court by repeating even a tenth part of the evidence which has been brought forward to establish these charges, but it is perhaps necessary to show that proof of them has been recorded. Mr Saunders, Officiating Commissioner and Agent to the Lieutenant-Governor, has explained under what circumstances the prisoner became a pensioner of the British Government in India, viz, that his grandfather, Shah Alam, after having been kept in rigorous confinement by the Maharattas, on their defeat by the English in 1803, applied to the British Government for protection. This was accorded, and from that moment, the titular Kings of Delhi became pensioned subjects of the British. It will be seen, then, that, as far as this family is concerned, there was no wrong to be complained of, and nothing but benefits to be remembered. The prisoner's grandfather Shah Alam had not only lost his throne, but had his eyes put out, and been subjected to every species of indignity, and was still kept in most rigorous confinement, when the English, under Lord Lake, appeared as his deliverers, and with generous sympathy for his misfortunes, bestowed on him rank and pension which, continued to his successors, have maintained them in honour and in influence, till like the snake in the fable, they have turned their fangs upon those to whom they owed the very means of their existence. The evidence that connects the prisoner with Muhammad Bakht Khan, Subadar of the Artillery, and which of itself will be sufficient to establish the charge, is a document from beginning to end in the prisoner's handwriting — To

THE SPECIAL SLAVE, THE LORD GOVERNOR, MUHAMMAD BAKHT KHAN BAHADUR

"Receive our favour, and understand that whilst the Neemuch Force have reached Alapur, its baggage is still here, and that you are therefore directed to take 200 troopers and 5 or 7 companies of infantry, and have all the baggage alluded to, such as tents, etc together with commissariat supplies, conveyed by the gharis to Alapur. You are further directed not to allow infidels staying near the Edgah to advance. Be it known to you further, that if the army returns without victory, and divested of its appliances of war, the consequence must be disastrous. You have been premonished and you are to consider these orders stringent."

It is true there is no date to this communication, but the allusions in it leave no possible doubt as to its having been within the period, embraced by the terms of the first charge.

Perhaps this will be the best place for the few observations I have to offer on the defence. The prisoner like every other that we have tried has, according to his own showing, been the mere victim of circumstances, declares that he had no intelligence on the subject previous to the outbreak; that the mutinous soldiery surrounded him completely and placed sentries on all sides and that, fearing for his life, he kept quiet, and went to his own private apartments that the mutinous soldiery kept the men, women and children prisoners that he twice saved their lives by entreaty and persuasion and that the third time he did all in his power to save them, but that the rebellious soldiery would not heed him, and eventually carried out their purpose of slaying these poor people against his orders. Now the chief objection to all this is, that it is not only unsupported by evidence, but is directly in the teeth of all the testimony whether oral or written, and whether given by his own servants or by others. The entire defence indeed is a mere tissue of denials of guilt; assertion of his not having been a free-agent, and an endeavour to put the onus of his misconduct upon others. He cannot challenge the authenticity of the documents against him or the evidence of his own handwriting, or his own seal, and his only expedient consists in assevering that what he wrote was by compulsion, and that his seal was affixed in the same way. The only dilemma that he appears unable to extricate himself from to his own satisfaction, in this way, is the going out to Humayun's tomb, and coming again. It was of course, necessary to state that the last was by his own choice and free will, and this would scarcely have been possible had his going out been represented as compulsory for if the sepoys had forcibly taken him out they would hardly allow him voluntarily to return, so we are treated with the following curious account "When the revolted and rebellious troops prepared to abscond, finding an opportunity, I got away secretly under the palace windows, and went and stayed in Delhi, when they were preparing to abscond instead of secretly planning to go out with them. However, I do not mean to take the defence, paragraph by paragraph and thus refute it. My best reply to it, I believe, will be by showing how fully and completely the charges have been proved and to this task I now again address myself and proceed to the consideration of the 2nd count, which is, if possible, still more fully established than the first. It runs as follows 'For having, at Delhi, at various times between the 10th of May and 1st of October 1857, encouraged, aided and abetted Mirza Moghal, his own son a subject of the British Government in India, and divers others unknown inhabitants of Delhi and of the North West Provinces of India, also subjects of the said British Government to rebel and wage war against the State.' The documents and other evidence in support of this charge are so numerous that it would be tedious even to reckon them. The newspapers speak of the appointment of Mirza Moghal to the office of Commander in Chief of his investiture with address of honour and other matters relating thereto. The oral testimony is very strong on the same subject, while the discovered correspondence shows that Mirza Moghal the son was perhaps next to his father the leading chief of the rebels in Delhi. I shall for form's sake give a short extract from a petition of Moulavy Muhammad Zahur Ali Police Officer of Najaf Garh, it is as follows —

"TO THE KING! SHELTER OF THE WORLD !

' Respectfully Sheweth—That the orders of the royal 'missive have been fully explained to all the Thakurs Chowdaries, Kanungos and Patwaries of this township of Najaf Garh and that the best arrangements have been established. Further that agreeably to your Majesty's injunctions steps are being taken to collect horsemen and footmen and it is explained to them that their allowances will be paid from the revenue of this division of the district. Your slave's assurance on this point, however, will not be believed till some Ghazis recently engaged shall have arrived. As regards Nagli Kakrowla Dacohoo Kallan and other

adjacent villages, your slave has to represent that, unrestrained by the dread of consequences, and bent on all sorts of excesses, the inhabitants have commenced plundering travellers "

This, might, I think, be sufficiently conclusive as to the words of the charge in reference to aiding and in abetting rebellion, Mirza Moghal, his own son, and divers other "unknown inhabitants of Delhi, and of the North-Western Provinces of India" inasmuch as the petition from which I am quoting, bears the autograph order of the prisoner referring it to his son Mirza Moghal, and directing him quickly to send a regiment of infantry with its officers of Najaf Garh, in accordance with wishes, and for the purpose of aiding and abetting the petitioner's schemes of raising horsemen and footmen to fight against the English. But there is another petition which has not yet been submitted to the Court, having only lately come to hand, and which may appropriately be introduced here. It is from Amir Ali Khan, son of the Nawab of Khurajpura, and is dated 12th of July. It runs as follows

"TO THE KING! SHELTER OF THE WORLD"

Respectfully Sheweth—That your petitioner has come to your royal court, at which Darius might have served as a door-keeper, having left his house animated by the ambition to stake his life in your Majesty's cause, and laments that he has lived to see the day when the accursed English have presumed to direct their cannon against your royal dwelling, the guardians of which are the angels of heaven. From the first dawn of the powers of discernment, your petitioner has been trained, like the lion to conflicts and war, and has not like the fox been concerned for his life—

Leopards destroy their prey on the summits of mountains. Crocodiles devour theirs on the banks of rivers. Your petitioner submits that if his prayer is accepted and the plans and stratagems necessary in this war are entrusted to his judgment, aided by your Majesty's august auspices he will, in three days, totally exterminate these people with white skins and dark fortunes. It was necessary, and I have therefore submitted it (Prayers for the prosperity of the reign, and curses in bitter and filthy language against those who may wish it harm.) Petition of the slave Amir Ali Khan, son of Nawab Dullail Khan, son of Najabat Khan, Chief of Khurajpura

"AUTOGRAPH ORDER OF THE KING, IN PENCIL "

"Mirza Sohuruddin will take enquiries and will give the petitioner service "

The third charge is—"For that he, being a subject of the British Government in India, and not regarding the duty of his allegiance, did, at Delhi, on the 11th May 1857, or thereabouts as a false traitor against the State, proclaim and declare himself the reigning King and Sovereign of India, and did, then and there, traitorously seize and take unlawful possession of the city of Delhi, and did moreover, at various times between the 10th of May and 1st of October 1857, as such false traitor aforesaid, treasonably conspire, consult, and agree with Mirza Moghal, his own son, and with Muhammad Bakht Khan, Subadar of the Regiment of Artillery, and divers other false traitors unknown, to raise, levy, and make insurrection, rebellion, and war, against the State, and further to fulfil and perfect his treasonable design of overthrowing and destroying the British Government in India, did assemble armed forces at Delhi, and send them forth to fight and wage war against the said British Government "

That the prisoner was a pensioned subject of the British Government in India has been already shown in treating of the first charge, and as the British Government neither deprived him nor any member of his family of any sovereignty what-

ever, but, on the contrary, relieving them from misery and oppression, bestowed on them largesses and pensions aggregating many millions of pounds sterling, the duty of their allegiance will, I think, be readily admitted, yet, as we have already seen, this traitor rushes to seize the first possible opportunity of overthrowing and destroying the government of his benefactors. On the afternoon of the very first day of the outbreak, in the Hall of Special Audience, he receives the obeisances of the revolted sepoys and by laying his hands on their heads unites with them in a common brotherhood of infamy. It is perhaps difficult to realize such a scene. An enfeebled tremulous old man striving with palsied hand to reach a sceptre far too powerful for his punny grasp and while bent by age and infirmity, inducting a monarch's garb to give, as it were, a benison and a blessing to the cause of the foulest treachery and murder? Dead to every feeling that falls honourably on the heart of man, this shrivelled impersonation of malignity must have formed no inapt centrepiece to the group of ruffians that surrounded him!

There are several witnesses who speak to the circumstances of the prisoner having been proclaimed. It is variously stated as occurring on different days and it is more than probable that such was actually the case. One or two proclamations would hardly be sufficient to carry the information through all the suburbs of so large a city as Delhi. The prisoner's attorney allows that the King's authority was established on the 11th of May and Gulab messenger being asked

Was the King proclaimed as the reigning sovereign immediately after the outbreak? answered, "Yes, the proclamation was made by beat of drum on the very day of the outbreak, about 3 in the afternoon to the effect that it was now the King's Government" while Chunn, Pedlar another witness declares that, "On the 11th of May, about midnight, some 20 guns were fired in the palace. I heard the reports at my house, and next day at about noon a proclamation was made by beat of drum that the country had reverted to the possession of the King. The next paragraph in the charge is in reference to traitorously seizing and taking unlawful possession of the city of Delhi but this is a point that I need not quote evidence to establish. It is difficult to turn our eyes in any direction without having convincing proofs of it. The charge then goes on to assert that the prisoner did at various times, between the 10th of May and 1st of October 1857 treasonably conspire, consult and agree with Mirza Moghal his son, and with Muhammad Bakht Khan, Subadar of the Regiment of Artillery and divers other false traitors unknown to raise levy and make insurrection and war against the State. Mirza Moghal was publicly appointed Commander-in-Chief and a special state procession in honour of his being so took place a few days after the outbreak. The witness who deposes to this is Chunn Lal Pedlar but he is unable to specify the exact date on which he witnessed it. Mirza Moghal's authority after this seems to have been uncontrolled at any rate in all matters immediately relating to the army until Subadar Bakht Khan, of the Artillery arrived, and was appointed both Lord Governor General and Commander in Chief. The date of his arrival was the 1st of July and after that some jealousy and clashing of authority between the two Commanders-in-Chief is observable for on the 17th of July Mirza Moghal writes and informs his father, that on that day he had formed up the army and taken it outside the city to attack the English, when General Bakht Khan interfered, and for a long time kept the whole force standing inactive, wanting to know by whose orders it had gone out and saying it was not to proceed without his permission, caused it to return. Mirza Moghal adds 'that having his order reversed cannot but cause vexation to any officer high or low and begs that definite instructions may be given as to whom the real authority over the army belongs. There is no order on this letter nor have we any intimation what decision was come to, but that some better arrange

ment was the consequence is evident, for, on the very next day, the 18th of July, we find Mirza Moghal and General Bakht Khan acting in concert, as the following letter from Mirza Moghal to his father will show. It is dated the 19th of July and runs as follows:—"Since yesterday the arrangements have been completed for carrying on active offensive operations both by night and day. If aid could be afforded now from the direction of Alapur, with the divine blessing, and through the influence of your Majesty's ever-during prestige, a final and decisive victory, it is to be expected, would soon be obtained. I therefore pray that positive orders may be issued from the throne to the Bareilly General to afford the aid in question, that is, that he be directed to proceed with troops to Alapur, and to make an attack on the infidels from that direction, while your slave with his division of the army makes another on this side, so that the two forces co-operating in the fight may in one or two days consign all the damnable hell-doomed infidels to hell. Moreover, it is to be expected that the force going to Alapur will cut off the enemies' supplies. It was necessary and has therefore been submitted." On this letter there is an autograph order of King to the following effect,—"that Mirza Moghal will make whatever arrangements may be proper," and also an after order apparently by Mirza Moghal—"That an order be written to the Bareilly General." I think this is conclusive of the three conspiring, consulting and agreeing together; but it may be as well to enter here two documents which have not as yet been submitted to the Court. One is a proclamation from General Muhammad Bakht Khan dated 12th of July, and is to the following effect. It has, I should observe, been extracted, from the Delhi Urdu News—"Let it be generally known to the persons living in the city and the country, such as chiefs of freeholds, pensioners, landholders of rent free estates, etc., that if, from anxiety for their incomes, they have hitherto continued on the side of the English, and have in any way colluded with them by conveying intelligence or furnishing them with supplies, their having done so will not be considered inexcusable. It is accordingly, now proclaimed that all those who have been alluded to are to cherish full confidence that when final and complete victory shall have been obtained, provided their title deeds, former and recent, shall on inspection be fully verified, they will have the present provisions in their favour continued to them, and that they will also receive compensation in full for the entire period during which their incomes may have been suspended, owing to the present disturbances, but if after receiving knowledge of these orders, any person shall, notwithstanding, forward intelligence or furnish supplies, etc., to the English he will be severely punished in the way Government may determine. The chief police officer of the city is, therefore, ordered to have the signatures of all chiefs of free-holds, of rent free estates, and pensioners residing in his jurisdiction, written on the reverse of this notification to them in this matter, in acknowledgment of their having been duly informed, and then to send the notification immediately to His Excellency." The other document is an order from the King, dated the 6th of September 1857, and is addressed to the chief police officer of the city. It runs as follows—"You are directed to have proclaimed throughout the city by beat of drum that this is a religious war, and is being prosecuted on account of the faith, and that it behoves all Hindu and Mussulman residents of the imperial city, or of the villages out in the country, as well as those natives of Hindustan who are arrayed against us on the ridge, or are anywhere employed on the side of the armies of the English, whether they be men of the eastern provinces, or Sikhs or foreigners, or natives of the Himalaya Hills, or Nepalese, to continue true to their faith and creeds, and to slay the English and their servants and you are directed to have it further proclaimed that those who are now present with the English force on the ridge, whether they be people of Hindustan, or foreigners or Hillman, or Sikhs, or whatever country they may be natives of, or whether they be Mohammedans, or Hindus born in Hindustan, they are not to entertain any

fears or dread of the enemy Whenever they come over to this side, kind provision will be made for them, and they will be allowed to continue in their own creed and religions You are directed to have it proclaimed further that all who will join in the attacks on the enemy, whether they be or be not servants will be allowed to keep themselves whatever property they may take from the English in plunder and that they will beside receive additional rewards from His Majesty, and will be amply provided for ' This paper, which I have just perused, is an office copy and was found recently among other documents in the office of the King's chief police station It bears the seal of that officer and is actually attested as a true copy by the signature of Bhao Singh, assistant to the King's chief police officer A more trustworthy and convincing document could hardly be laid before a Court. It seems to me fully to complete the proof of the third charge, and to render further quotation from the numerous other documents unnecessary It also tends to establish the latter portion of the fourth charge

To this charge I will now turn my attention. It accuses the prisoner "of having, at Delhi, on the 16th of May 1857, or thereabout, within the precincts of the palace at Delhi, feloniously caused and become accessory to the murder of 49 persons chiefly women and children of European and mixed European descent." As far as the murder of these poor victims is concerned I have nothing to allege, the facts have been detailed before the Court in all their horrid minuteness, and they are not such as to be easily forgotten. The cold blooded hardened villainy that could revel in leading women and young children to the shambles and this too without the miserable apology of imagined wrong or the mistaken zeal of religious frenzy, is something so inhuman that the mind might well refuse to accept it as truth did not all the force of concurrent ideas, of direct testimony of circumstantial proof, and elsewhere repeated reacting of the same dreadful tragedies, enforce it upon our convictions It is not then such admitted facts as the above that I am here called upon to establish They are unhappily but too prominently and painfully shaped forth to require further illustration 'It remains however to show how deeply the prisoner stands implicated in this revolting butchery, and whether as averted in the indictment, he did feloniously cause and become accessory to the murder of these 49 persons I shall not, in so doing attempt to avail myself of that law which makes all persons joining in insurrection and sedition individually responsible for every act of violence that may be committed by those with whom they stand leagued in illicit combination, even though such acts may have been against their wishes or without their cognizance. I mean, however separately to consider each fact connecting the prisoner with the deaths of these women and children I will revert to the evidence of their capture the place of their imprisonment, the fearful privations to which they were subject, and the more than cruel treatment which they experienced, from the commencement of their confinement, all of which were but too prophetic of the ultimate doom that awaited them The first person whose testimony I shall have to quote is Ashan Ulla Khan the physician when asked, 'How was it that so many English women and children were brought to the palace in confinement, he replied, "The mutineers took them in and about the city; and having established their own quarters in the palace they brought their prisoners in with them too Being further interrogated, he declares that the mutineers did not retain the custody of their prisoners but as each successive one was brought in reported the circumstances to the prisoner and were told to take the Europeans to the kitchen, and keep them confined there. Being again questioned he asserts the King himself appointed the kitchen as the place of their confinement and observed at the time that it was a large capacious building, so that it appears that the Prisoner not only fixed upon the building himself as the place for herding indiscriminately together men women and children, but from its being in his own palace and from his volunteering a description of it it is evident that he had some personal

knowledge of what it was like. He terms it a large capacious building, but these are not very definite terms, and when used in reference to different objects may relatively have widely different meanings. To obviate any misconception on such a point, I have, since Ahsan Ulla Khan gave this evidence, visited the place myself, and taken its measurements and description. The building is 40 feet long, 12 ft broad and about 10 ft high. It is old, dirty and dilapidated, and without the vestige of plaster, but it is worse than this, for it is dark has no mud flooring, no windows, and is entirely without the means of ventilation or of light. There is but one aperture to it, a miserable small wooden door, but I will now let Mrs Aldwell describe it in her own words —“We were all confined in one room, very dark, with only one door, and no windows or other opening. It was not fit for the residence of any human being, much less for the number of us that were there. We were very much crowded together, and in consequence of the sepoys, and everyone who took a fancy to do so, coming and frightening the children, we were obliged frequently to close the one door that we had, which thus left us without light or air. The sepoys used to come with their muskets loaded and bayonets fixed, and ask us whether we would consent to become Mahomedans and also slaves, if the King granted us our lives, but the King’s special armed retainers, from whom the guard over us was always furnished, incited the sepoys to be content with nothing short of our lives, saying we should be cut up in small pieces, and given as food to the kites and crows. We were very indifferently fed, but on two occasions the King sent us better food.” Such was the return made by this traitor for the millions of pounds sterling bestowed by the English on himself and on his family having, as one of the witnesses has specifically stated, abundance of room where these women and children would have been safe in the apartments occupied by the females of his own establishments, where, it is said, there are secret recesses in which 500 people might be concealed, and where, even had the rebels dared to violate the sanctity of the zenana, all search would have been fruitless, and there being, according to another witness, on scarcity of vacant buildings in the palace in which the ladies and children could have been kept in confinement, and in which they might have had every comfort—this minion of English generosity preferred to select for them the very den set apart for culprits and for felons, and where they even received far worse than a felon’s treatments, for they were crowded into a small space, and were daily exposed to the insults and cruelty of all who chose to molest them. Such was the requital to the English for a princely pension and an imperial palace. It will be observed from the statements of Ahsan Ulla Khan and Mrs Aldwell that both agree in attributing these measures personally to the King, and when we recollect the trifling matters which were, on every occasion, referred to him, and which, as has been fully demonstrated in this Court, received not only his attention but were endorsed, by his own autograph instructions, is there any room left for doubt, that the more importance concerns were under his special control also? Indeed, the concurrent testimony of many witnesses, and the irrefutable evidence of his own handwriting incontestably prove that such was the case. It is thus we find the King appointing the prison, that the King’s special armed retainers were always on guard over the prisoners that it is the King who supplies them with their very indifferent food, and on two occasions sends them some of better quality, and thus too, the sepoys asked them whether they would consent to become Mahommedans and slaves, if the King granted them their lives, and who, on perusing even thus much of the evidence can doubt that he had the power of doing so? Has there been one single circumstances elicited that show that the prisoner even wished to save them, or that he even extended to them one act of common courtesy or kindness? Very very far from it for whilst no check was given to those who showed the prisoners every species of unmanly brutality, the ordinary charity of giving food and water to a Christian, was severely punished, and a Mahommedan woman, simply on this account, was actually immured with the prisoner.

Can the bitterness of rancour go further than this? Or is it possible to contemplate the place and nature of the confinement fixed for these tender women and children, without coming to conclusion that a cruel death was from the first moment reserved for them, and that, in sword seems to have been but a merciful deliverance from the lingering death, which confinement is so loathsome a den at such a season of the year must eventually have inflicted on all exposed to it.

Might I not here stop and confidently on this point await the decision of the Court against the prisoners. The proof, however, swells in volume as it proceeds and I made to leave no portion of it untraced. Gulab, a chaprassy, or messenger, has distinctly stated that a couple of days before the massacre took place, it was known that the Europeans would be killed in two days, and that on the day fixed for the slaughter arriving, great crowds of people were flocking to the palace. Every witness to the scenes who has spoken of it in Court has alluded to the crowds assembled both as spectators and actors on the morning in question, and, as this was at the early hour of between 8 and 9, there seems no doubt that previous information of what was to take place must have been given. Nothing indicates that an outburst of fury either on the part of the populace or military in any way led to a catastrophe so awful. On the contrary the witness distinctly says that without orders it could not have happened, and that there was but two sources from which such an order could have emanated, viz. the King and his son, Mirza Moghal, adding that he does not know which of them gave the order. He, however, distinctly states that he was present at the murder of these European prisoners and that he saw them all standing together surrounded on all sides by the King's special armed retainers or what you may term his body guard, and some of the infantry mutineers and that though he did not observe any signal or order given, yet, on a sudden the men just mentioned drew their swords simultaneously attacked the prisoners and continued cutting at them till they had killed them all. A second witness, viz., Chuni Lal, the newswriter, when asked by whose orders these Europeans were murdered distinctly replies that It was done by the King's order who else could have given such an order? He and other witnesses concur in stating that Mirza Moghal the King's son from the top of his house which overlooked the court yard was a spectator on this occasion this Mirza Moghal being at that time, second only to the King himself in authority. Is it credible, then under such circumstance the King's own bodyguard his special armed retainers could have dared to perpetrate this frightful butchery without his order and against his wishes? If a doubt could be entertained on such a perusal of the writings evidently approved by the prisoner in which blood thirstiness and sanguinary ferocity against the English are so glaringly conspicuous. In reference to the presence of Mirza Moghal and in further proof that it was by the King's own orders that these unhappy women and children were massacred I shall quote the testimony of the King's own secretary Mukund Lal. To the question 'By whose order were the ladies and children that were prisoners in the palace murdered?' he replies 'These people were being collected for three days on the fourth day the infantry and cavalry soldiers, accompanied by Mirza Moghal came to the entrance to the King's private apartments and requested the King's permission to kill them. The King was at that time in his own apartments. Mirza Moghal and Bissant Ali Khan went in side while the soldiery remained without. They returned also it 20 minutes when Bissant Ali Khan publicly and in a loud voice proclaimed that the King had given his permission for the slaughter of the prisoners, and that they could take them away. Accordingly the King's armed retainers in whose custody the prisoners had been took them from the place of confinement and in connection with some of the mutinous soldiery killed them. It appears then that Mirza Moghal had just come from the prisoner's presence and was armed with his authority for carrying out this most hideous deed of blood it may seem almost superfluous to add anything to the

above; but the proof furnished by the extract from the prisoner's diary is so important and convincing that I feel bound to quote it. The evidence of the physician, Ahsan Ulla Khan, regarding it is as follows: "Was a Court diary of occurrences at the palace kept by order of the King during the rebellion? Answer: The Court diary was kept up as usual according to the custom which had long preceded the outbreak. Question: Look at this leaf and see whether you can recognise the handwriting on it? Answer: Yes, it is, in the handwriting of the man who kept the Court diary, and this leaf is a portion of it."

Translation of an extract from the Court diary for the 16th of May, 1857

"The King held his Court in the Hall of Special Audience, 49 English were prisoners, and the army demanded that they should be given over to them for slaughter. The King delivered them up saying, 'The army may do as they please,' and the prisoners were consequently put to the sword. There was a large attendance, and all the chiefs, nobles, officers and writers presented themselves at Court and had the honour of paying their respects."

Here then we have oral as well as most unimpeachable written testimony, all concurring on this point, and it would seem nearly impossible to make the proof clearer, had we, not the prisoner's written confession of the crime. I do not mean in his defence, which is simply a document framed for this Court, and is but a mere tissue of false denials without an effort at refuting what stands so prominently against him. I allude of course to his long letter to his son Mirza Moghal, in which he actually makes merit of the slaughter of his Christian prisoners, and urges it as a reason why the soldiery should be more attentive to his commands. After this, to prolong any argument upon the subject would be improper. There is then but the last portion of the fourth charge uncommented on, and to establish it we have copies of circulars addressed from the King to Rao Bhara, the Ruler of Cutch Bhoj, to Ranjit Singh, Chief of Jasalmir, and to Rajah Gulab Singh, of Jummoo. The following extracts will be sufficient, *viz*,

To

RAO BHARA, RULER OF CUTCH

It has been reported that you, every-faithful one, have put the whole of the infidels to the sword, and have thoroughly cleansed and purified your dominions of their unclean presence. "We have been extremely gratified to hear of such conduct on your part, and you are therefore honoured with this address, to the intent that you will institute such arrangements throughout your territory as that none of the creatures of God may in any way be aggrieved or oppressed. Further, should any number of the infidels reach your dominions by sea, you will have them slain. In doing this you will act entirely in accordance with our pleasure and wishes."

"To RANJIT SINGH, CHIEF OF JASALMIR

"It is clear to our belief that throughout your dominions the name and trace of these ill-omened infidels, the English, must not have remained. If, however, by any chance or possibility some have escaped till now, by keeping hidden and concealed, first slay them, and after that, having made arrangements for the administration of your territory, present yourself at our Court with your whole military following. Considerations and friendliness a thousand-fold will be bestowed on you, and you will be distinguished by elevation to dignities and place which the compass of your qualifications will not have capacity to contain."

"To RAJAH GULAB SINGH, RULER OF JUMMOO

"I have been made acquainted, by your petition, with all particulars of the slaughter throughout your territory of the accursed unbelieving English. You are

considered worthy of a hundred commendations. You have acted in this matter as all brave men ever acquit themselves may you live and prosper. Again "Come to the royal presence, and slay the accursed unbelieving English, and all other enemies, wherever you may find them on the way. Whatever may be your hopes and expectations, the dignity and elevation to which you will be promoted amongst your equals will surpass all that you may be able to imagine, and you will further be rewarded and dignified with the title of Rajah." On one of the petitions to the King from a Duffadar of the 4th Irregular Cavalry, boasting of having murdered his officers at Muzaffernagar, the order for an appointment in return is in the prisoner's own handwriting.

I herewith conclude my observations on the charges, and it will now remain, Gentlemen, for you by your verdict, to determine whether the prisoner at your bar in retirement and seclusion may yet claim the respect due to deposed majesty, or whether he must henceforth rank merely as one of the great criminals of history. It will be for you to pronounce whether this last king of the imperial house of Taimur shall this day depart from his ancestral palace, bent down by age and by misfortune, but elevated perhaps by the dignity of his sufferings and the long borne calamities of his race or whether this magnificent Hall of Audience, this shrine of the higher majesty of justice—shall this day achieve its crowning triumph in a verdict which shall record to this and to all ages that kings by crime are degraded to felons, and that the long glories of a dynasty may be for ever effaced in a day.

The consideration of the specific charges against the prisoner being now closed, I trust it may not be thought presumptuous if I offer some observations on the evidence elicited as the cause of the late rebellion and of the existence of previous conspiracy. I have in a former part of this address, argued that if the native regiments, previous to the cartridge question being mooted had been in a sound and well affected state such a frightful, and all but universal, revolt could not have occurred, that there must have been some other and more latent power at work to have thus operated on a whole army scattered in different cantonments from Calcutta to Peshawar. I think that such could not have been accomplished without some secret mutual understanding and some previous preparation, the establishment of which may appropriately be termed conspiracy. I have stated also that it seems as if it was not owing to a cartridge of any kind that such an amount of mutiny and murder has solely to be attributed, but I should be more than blind to all that has appeared on these proceedings and elsewhere, if I failed to recognize in the cartridge question, the immediate means or instrument adopted for bringing about a much desired end. It seems to have been the spark not accidentally shot forth, but deliberately chosen to explode a mine previously prepared. In alluding then to the existence of a conspiracy, I do not mean to imply that we have come upon traces of a particular gang of men specially banded together for the fixed definite object of causing the late rebellion in the native army in any manner similar to that in which we have seen it developed but such evidence as we have been able to obtain does appear to me to point out that for a considerable time antecedent to the 10th of May agitation and disaffection to British rule among the Mohammedans was more than ordinarily prevalent and that such disaffection had been stimulated by active and designing men who have most craftily taken advantage of every circumstance that could be made suitable for such a purpose. The annexation of Oudh to British rule was perhaps one of these. It seems to have been particularly displeasing to the Mohammedans as annihilating the last throne left to them in India, and for some other reasons, it would appear to have been almost equally unpalatable to the Hindu sepoys. It may perhaps have interfered with his position there as a privileged servant of the Company for instead of having to rely on the influence and prestige of the British Government in dealings or disputes with the native landholders of that province he found himself brought at once under direct

European control. One of the witnesses, Jat Mall, draws a marked distinction between the Hindu sepoy and the Hindu tradesmen, in reference to their feelings for the British Government, and perhaps the annexation of Oudh, with other causes, may tend to account for it. Being asked whether there was any difference between the Mohammedans and Hindus in this respect, he replies "Yes, certainly, the Mohammedans, as a body, were all pleased at the overthrow of the British Government, while the merchants and respectable tradesmen among the Hindus regretted it." He, however, says that the general feeling throughout the army was the same both among the Hindus and Mohammedans, and that they were both equally bitter. and this view of the case is, I think, supported by our experiences of both. The great bulk of the infantry portion of the native army was undoubtedly Hindu; but we have not found this any check or restraint upon their revolting barbarity, and as far as the army has been concerned, Hindus and Mohammedans appear to have vied with each other only in the enormity of their crimes. But apart from the army, the revolt has perhaps assumed many of the features of a Mussalman conspiracy, and it is, I think, probably that to Mussalman intrigue may eventually be traced those false and fabricated rumours, which, adroitly mixed up with some small portion of truth, have been so instrumental in effacing the last vestiges of fidelity in an army whose faithfulness was at one time perhaps its very chiefest pride and boast. It does not belong to such an occasion as this to revert to past years, and step by step to trace the causes which have combined to destroy the reliance once placed upon those who are now so notorious for their perfidy. Some of these causes doubtless have been beyond government control, and were perhaps inherent to a state of continued progress on the one side, and an inveterate priestly opposition to it on the other. It will be sufficient if I here merely allude to several previous occasions, not of distant date, when some regiments of the native army showed how little they were to be depended on. On those occasions also it was evident that a unity of purpose and a singleness of feeling were, in a short time, organised by some process not immediately patent to their European Officers: a mutual correspondence either by emissaries or letters was perhaps then initiated, and the lessons thus learnt was not easily forgotten. I do not mean to argue that from that time the Native Indian Army became one large debating-society. Very far from it. I believe that in their own fashion, most of the sepoys were good and well meaning servants of the Government. I say, in their own fashion, because, it appears to me they are always deficient in natural firmness, and have no idea of strong moral rectitude, their fidelity as long as it exists is more of a habit than of a principle, upheld by superstition, but wanting the sustaining power of true religion. Among such a body as this there must always be some discontented intriguers, and who that knows anything of Asiatic character will not readily admit, especially with reference to Hindus, that the few are more potent for evil than the many for good? Let but three or four leaders come forth in all the open audacity of crime, or mix themselves up in the secret intrigues of sedition, and the rest, if not immediately panic struck, never think it their duty to check or oppose them. They may excuse themselves for a time by holding aloof from what they do not approve but active interference even in prevention of mutiny and murder, seems to form no part of their creed, either religious or political. The most serious crimes are thus passively encouraged, and temporary immunity securing proselytes, all are eventually engulfed in the same depths of infamy. Thus the crimes of a few lead to the ruin of many. That these influences have been vigorously at work in extending the late rebellion, I think few will be inclined to deny. I am aware that no correspondence, and perhaps little direct evidence to such a point, has been brought before the Court: indeed, in reference to the sepoys we have not been in a position to obtain either one or the other, still if, as has been currently, and, I believe, truly reported that the number of letters passing

among our native soldiers for a month or two prior to the outbreak was very considerably larger than usual, this circumstance, combined with such facts as have come under our notice, would lead, almost irresistibly to the conclusion that some sinister agitation had been extensively at work, and that increased disaffection and subordination would necessarily be the result moreover that in such a state, revolt would reduce itself to a mere calculation of time. In the above remarks I have attributed much of what has occurred to the pernicious influence of evil intriguers and it may naturally be enquired why these should have had greater effect at the present juncture than at any former one. Some of the causes I have already hinted at, such as the annexation of Oudh, and the progress of European civilization outstriking and in its natural course, threatening to sweep away the puny barriers upraised by priestly cunning, for the preservation of the grossest ignorance, and thus commencing the subversion of religions that are unable to bear the lights of even natural science. I believe too that the propagandists of sedition may artfully have availed themselves of some recent acts of Government to spread panic and alarm in reference to future forcible interference with caste prejudices. I allude to the agitation about the remarriage of Hindu widows the enlistment for general service, the cartridges, etc. I do not mean, in this to refer the slightest apology for whose conduct excites nothing but loathing and disgust. Pampered in their pride and beset in their ignorance, they had as a body become too self-sufficient for military subordination and unhesitating obedience. Experienced as they were in mutual combination they appear again easily to have entered into schemes for dictating to the Government their views in reference to imagined grievances, but that open defiant mutiny had been generally resolved upon by the army, or, at an rate, by the Hindu portion of it prior to the trial of the 3rd Light Cavalry troopers is more, I think, than has been established. Up to that time there was, no doubt, a feeling of uneasiness a restless apprehension and an air of respectful mutiny pervading the native ranks. The sepoys, in many instances, appeared to imagine that disobedience to military command was scarcely criminal if accompanied by a salute and a submissive demeanour. Habituated to combination and well aware of the strength of numbers they latterly had seldom lost an opportunity of bringing forward their grievances not individually but in masses. On such points there was no difference between Mussalman and Hindu they could both readily unite, and had already done so for the purposes of insolent dictation. Indeed, if we search back into history, I believe we shall find that this has ever been what I may term the normal condition of Asiatic armies and it is perhaps the necessary result of giving unity and power to large bodies of men without the checks furnished by education loyalty and religious principle to control them. Military discipline, without these auxiliaries, is but a dangerous weapon and one that has frequently been turned against those who have sharpened and prepared it. As a corollary to this, it may be observed that rebellion and insurrection among the unarmed and untutored people of Asia is rare indeed. Even the forcible conversion of the Hindus to Mohammedanism under former Emperors of India seems to have been insufficient to rouse them to resistance. It is then the attempt at domination by the sepoy alone that has to be guarded against. The distinctions of caste may to a certain extent at former periods, have proved serious obstacles to any very extensive combination of men of different sects, either for political or other purposes but we should remember that this very circumstance of caste companionship has necessitated the existence of a number of distinct self-governing societies has habituated the people of Hindustan to meetings among themselves where publicity is avoided and thus giving them their primary lesson in uniting for particular objects, has endowed them with a natural facility for more extended combinations of a secret and sinister character. Under these circumstances there wanted but the means and the occasion for carrying them out and who does not perceive that the native army

afforded the one, and a variety of incidents have favoured the other? Brahman and Mussalman here met as it were upon neutral ground, they have had, in the army, one common brotherhood of profession, the same dress, the same rewards, the same objects to be arrived at by the same means. They frequently joined each other in their separate festivals, and the union encouraged by the favour of the Government was finally resorted to as a measure to subvert it. I do not, however, intend to dwell on all of the many influences which may have assisted in bringing about the recent catastrophe. Such a discussion, in this place, might not be approved of.

It seems to me, however, apparent that it was not and could not have been the greased cartridge alone that effected it. There was previous preparation, among the sepoys; and there was also a general unsettling of men's minds throughout the country, and among the Mohammedans in particular. I believe, indeed, that the facts elicited on this point may be ranged appropriately under the head of "Mohammedan conspiracy," the chief object of which seems to have been to spread disaffection and distrust of British rule, and, by the dissemination of false and evil reports, and by fabrications of the most insidious kind, to prepare all the people for change and insurrection. As far as can be traced, the commencement of this must have originated with the prisoner or with some of those, such as Hasan Askari and others who were admitted to his most secret and confidential councils. Be this as it may, there cannot, I imagine, be a doubt that in sending Sidi Kambar to Persia and Constantinople as an ambassador with letters to the sovereign of that country, soliciting aid and elevation to a throne, the prisoner became the principal in a conspiracy which, indirectly, at any rate, must have been auxiliary to the recent frightful outbreak and its attendant horrors. It is worthy of particular notice, as connecting the two together, that this Sidi Kambar's departure took place according to the most reliable account, just two years before May 1857, and that his promised return, with the aid sought for was fixed for the time when the outbreak actually took place. Coupling this with the prophesy among the Mohammedans that English sovereignty in India was to cease 100 years after its first establishment by the battle of Plassey in 1757, we are able to form something more than conjecture as to the causes which have given to Mohammedan fanaticism its delusive hope of recovering all its former prestige. I have already alluded to the dream of Hasan Askari the priest, and its interpretation so plausibly contrived to correspond with the wishes of the King, and of those about him. The circumstances may seem trivial to us, but it was doubtless a means well calculated to make a deep impression upon the superstitious minds of those to whom it was addressed, and to cause expectation and belief in what was predicted by one said to be possessed of miraculous powers, and accredited with holding direct communication with heaven. We learn too from the petition of Muhammad Darwesh to Mr Colvin, the Lieutenant-Governor, dated 27th of March 1857, that Hasan Askari had, at this time, assured the King of Delhi that he had certain information that the prince royal of Persia had fully taken possession of, and occupied Bushire, and that he had entirely expelled the Christians, or rather, had not left one alive there, and had taken away many of them prisoners, and that, very soon indeed, the Persian army would advance by the way of Kandahar and Kabul towards Delhi. He, moreover adds, "That in the palace, but more especially in that portion of it constituting the personal apartments of the king, the subject of the conversation night and day was the early arrival of the Persians. Hasan Askari has, moreover, impressed the King with the belief, "that he has learned, through a divine revelation, that the dominion of the King of Persia will to a certainty extend to Delhi, or rather over the whole of Hindustan, and that the splendour of the sovereignty of Delhi will again revive, as "the Sovereign of Persia will bestow the crown on the King." The writer goes on to say that throughout the palace, but particularly to the King, this belief has been the cause of great rejoicing, so much so that prayers are

offered and vows "are made, while at the same time, Hasan Askari has entered 'upon the daily performance, at an hour and a half before sunset, of a course of propitiatory ceremonies to expedite the arrival of the Persians and the expulsion of the Christians. It has been arranged that every Thursday several trays of victuals 'wheatmeal oil, copper money and cloth should be sent by the 'King in aid of these ceremonies and they are accordingly "brought to Hasan Askari

We thus see how early and how deeply the priesthood interested and engaged themselves in this matter, and how completely and exclusively Mohammedan in character was this conspiracy. If we could but have stepped behind the scenes, and witnessed these ceremonies at which superstition presided, and have heard these prayers and vows offered up for the arrival of the Persians and the expulsion of the Christians we should doubtless have had depicted to us to foreshadowings of those dreadful tragedies which to all time, will render the past year so painfully memorable. We may imagine and faintly conceive to ourselves some portion of the rancour of these Mohammedans when we recollect not only their deeds but the concentrated hatred which breathes through their petitions and does not stop with this world but rejoices in the idea of eternal torments for us hereafter. One can not help enquiring whether there are really many millions of human beings in Hindustan imbued with these feelings for Europeans. I will leave those who hear me to form their own opinions on this subject without venturing to proffer mine. We learn, however, from Mrs Aldwell, that during the Mohurrum festival, she heard the Mohammedan women praying and teaching their children to pray for the success of their faith, and these prayers were generally accompanied by execrations against the English. Nor did even accomplishing the cruel death and sufferings of helpless women and children tend in any way to abate the ferocity of their malignity, or to waken one chord of mercy or commiseration in their breasts, for we find from the local newspapers that at this time this most hideous massacre was being perpetrated about 200 Mussalmans were standing at the reservoir uttering the coarsest abuse against the prisoners. Were it not too well attested such demoniac malignity would scarcely be credible.

The next point which I shall advert is the circulation of the chapatties in the form of ship biscuits. Now whether they were sent round under the fiction of a government order, signifying that in future there should be but one food and one faith or whether according to another interpretation, they were meant to sound a note of alarm and preparation giving warning to the people to stand by one another on any danger menacing them the contrivance was a most insidious one, and calculated to breed distrust and suspicion in the hearts of many who were strangers to such feelings before. That it created no stronger impression on the native mind that it did is perhaps attributable only to the early check it received at the hands of authority, and it would doubtless be both interesting and important if we could discover how and by whom such a proceeding was initiated. This and the false rumour about mixing ground bones with the flour had doubtless one common origin, and it is not going beyond the bounds of fair indication or reasonable inference to attribute both one and the other to the unceasing wiles of Mohammedan conspiracy. We perceive that the Hindu sepoys under the impulse of a first reaction in their feelings reproached the Mohammedans with misleading them, and it is a most significant fact on these proceedings that though we come upon traces of Mussalman intrigue wherever our investigation has carried us yet not one paper has been found to show that the Hindus as a body had been conspiring against us or that their Brahmans and priests had been preaching a crusade against Christians. In their case there has been no king to set up no religion to be propagated by the sword. To attribute to them under such circumstances the circulation of these chapatties, or the fabrications about ground bones in the flour, would be to ascribe

to them acts without a meaning, and a criminal deception without any adequate motive. A very marked feature in this Mohammedan conspiracy is the activity and persistence with which it has been carried out, the circulation of the chapaties having been early prohibited by authority, and thus rendered non-effective for the purpose of extending sedition, some other expedient was necessary to replace it, and we at once find the tale of the "bone dust mingled with flour" very adroitly selected as the substitute. It was, in fact, still adhering to the material of chapaties, and continuing the symbol of "one food, one faith." It was indeed the chapaty without its form, and without its inconveniences. The schemers had apparently learnt that the chapaty was too specific and too tangibly open to European interference to be largely availed of as an agent for evil, and hence its transformation into flour, the bone dust being added to the one as the equivalent of the form of the ship biscuit to the other. To give out then that such was the nature of the flour stored at all the depots of supplies along the Grand Trunk Road, for, from them, during their marches, the sepoys are, in a manner, compelled to get their food, was to attain the very object the conspirators must have most desired. If true, the Government had already commenced what would be deemed forcible conversion, to Christianity. If they could, but establish a firm and general belief in this, their game was in their own hands; and that they did succeed in doing this to a very great extent is, I imagine, undeniable. I must own that to me this apparently natural transition from the chapaties to its component parts, seems a master stroke of cunning, and evidenced most able leadership in the cause the conspirators were embarked in.

To prove, moreover, that no mean order of talent was at work, and that all the appliances that craft and treachery could avail themselves of, were resorted to, we have only to refer to the extracts from the Authentic News, and also to the other native publications of that period, and we shall perceive with what steadfast consistency the ulterior aim is always kept in view. The chapaties, the bone dust in the flour, the greased cartridges, were all most appropriate for the Hindus; but a different pabulum was requisite for the Mussulmans, and we shall now see with what subtlety it was administered. The first paper commences by announcing that the King of Persia had ordered a concentration of most of his troops at Teheran, and then, declaring it to be currently reported that such a demonstration against Dost Mohammed Khan was only a strategic move to cloak the King of Persia's real design of fighting against and conquering the English, the editor makes certain that, at any rate, some change of feeling has taken place amongst the three powers. The next extract is dated the 26th of January 1857, and commences by asserting that all the newspapers agree in declaring that the King of France and the Emperor of Turkey had not as yet openly avowed themselves the allies of either the English or the Persians, but that their ambassadors were secretly visiting and presenting their gifts to both of the belligerents. "Some people," says the editor, "think that King of France and the Emperor of Turkey will not mix themselves up in the quarrels between the Persians and the English, but most people, he adds, "say that they will both side with the Persians. As for the Russians, however, they make no secret of the readiness with which they are assisting, and will continue to assist the Persians, whether it be with funds or with forces. It may be said that virtually the Russians are the cause of the war, and that using the Persians as a cloak, they intend to consummate their own designs regarding the conquest of Hindustan. It is to be believed that the Russians will soon take the field in great force." Here then we have not only Persia and Russia advancing immediately upon India with immense armies, but France and Turkey to assist them, while the forsaken and devoted English are represented as by no means

sure even of the alliance of the Afghans under Dost Mohammed Well might the editor, after announcing such formidable coalitions, somewhat dramatically exclaim, 'Let the readers of the Authentic News be prepared to see what the veil of futurity will disclose' Accordingly, in the next extract, we perceive that "the King of Persia had solemnly promised to his courtiers the Governorships of the different presidencies and places one is to get Bombay, another Calcutta and a third Poonah, while the Crown of Hindustan is plainly spoken of as reserved for bestowal on the King of Delhi, this very prisoner before us You will recollect, Gentlemen, that several copies of this paper, the Authentic News, used to be sent to the palace, and one can imagine the joy and exultation with which such passages must have been perused, especially when, added thereto is the assertion that the Emperor of Russia had sent an effective and thoroughly appointed army of 400 000 men with abundant munitions to assist the King of Persia in his hostile designs upon India But it was not in the palace, and by the princes alone, that such paragraphs were read with avidity the whole population was intent on them. Sir Theophilus Metcalfe had told us that the subject of the advance of the Persians upon Herat was much discussed among the natives, and frequently in connection with the idea of Russian aggression upon India, every newspaper having at this time its correspondent in Cabul Nor indeed did the discussion and interest excited by these concocted hostile movement cease here, for the same witness declares that agitation about this time prevailed among the sepoys, and that about five or six weeks before the outbreak it was currently reported in their lines, and much discussed among them, that 100 000 Russians were coming from the north, and that the Company's Government would be destroyed and in fact that the idea of a Russian invasion was universally prevalent. The venom and virus of these false publications were then taking their intended effect, and it would seem a mere perversion of reason longer to blind ourselves with the idea that the outbreak was fortuitous, or that a greased cartridge occasioned it. In a former article of the Authentic News we have seen Dost Mohammed alluded to as but a doubtful ally of the English In this one, however, as events progress, he is spoken of as being secretly in league with the King of Persia and that superstitious aid may not be lost sight of, it is embarked how wonderfully four distinct unexpected coincidences had impelled the King of Persia to declare war against the English The first was that Herat in another place described as the key of India has so easily fallen into his possession, the second the unforeseen coming of the Russians to assist him the third the nobles of Persia unanimously counselling an advance on India and predicting that God would bestow victory and the fourth the simultaneous rising and assembling of the whole of Persia for the prosecution of a religious war Portents and miracles were likewise brought forward still further to excite the Mahommedan mind as the following extract from the Authentic News dated 15th of September 1856, will sufficiently prove. It is headed.

Local News from the Hansi District.—A man just come from the country tells the editor that unlike other places the Huli is being burnt there at this season of the year and the saturnalia attending festival are now going on. The man who states this ascertained on enquiry that the reason for the unseasonable observance of this festival is that that three girls were born at a birth and three spoke immediately The first said The coming year will be one of great calamities, various calamitous visitations will afflict the nation, the second said Those who live will see and the third in an impressive and forcible tone said, If the Hindus will burn the Huli in the present season they will escape all these evils God alone is omniscient

It is too much I am afraid the case with persons accustomed to European habits of thinking to view such statements and articles as these merely in reference

to the impression they would be likely to make on themselves. The taking of Herat, the predictions of the nobles, etc., and the fabulous prophesies of these girls, would, in that case, receive hardly passing attention. But we should commit a grievous and most fatal error, if we were to gage Asiatic thoughts and understandings by the same measure that would be applicable to our own. If, avoiding this mistake, we proceed to consider the above editorials in relation to the people they were written for, we shall find that they are not only most insidiously worked up to meet their particular prejudices, but are also made to bear a striking affinity to the fulfilment of their prophesies; to the dreams of Hasan Askari, to the negotiations of Sidi Kambar; and to the ancient traditions of Mohammedanism. Are we then to suppose that in all this there was no connection between the palace and the press were all these concurrences fortuitous? Can it be that the dreams of the priest, the plots of the court, and the fabrications of the newspapers worked accidentally together? We have already seen the decoys by which the Hindu sepoys were to be gamed: and is it not the same spirit of evil that we can recognise here? Are the circumstances appealing to Mohammedan pride, to their superstitious bigotry, to their lust for religious war, and to their hatred for the English, dwelt upon with a less perfect knowledge of their peculiar inferences? In an extract from the Authentic News, dated the 19th March, it is stated that 900 Persian soldiers, with some officers of high rank, had entered India, and the 500 more were then staying in Delhi itself in various disguises. It is true that this is given out on the authority of one Sadik Khan, a person whose identity not being established, was evidently in disguise even to his name; but this very circumstance was no doubt a part of the scheme. It gave an air of greater mystery to the announcement of the paper, and seems to have been purposely contrived to let the imagination of the readers supply an exaggerated idea of his real rank and importance. How, it may be asked, even under this cloak of a false name, could such a statement be given forth in the leading newspaper of the city, without some deep and ulterior object? It not only assigns deep conspiracy to the Persians, but, if false, as we know it to have been, is proof of conspiracy in the editor and those who employed him. This name of Sadik Khan, be it remembered, was the one attached to the proclamation purporting to be from Persia, and put up in the Jama Masjid. The proclamation, then, and the assertion about these 900 Persian soldiers, were evidently parts of one and the same scheme, and seem to have been thus linked together that the one might, in a measure, support the other. If, for instance, any questioned the authority of the proclamation, there was the answer ready that the bringer of it was actually in the city with 500 other Persians also in disguise, and *vice versa*. If the advent of the Persians was disbelieved, was not the proclamation a voucher for its reality? The same depth of artifice is apparent everywhere, and the more we consider the subject, the more fully convinced we shall be of the wiles and stratagems so systematically resorted to. For instance, what would such a proclamation as that attributed to the King of Persia, have been without some demonstration, feigned or real, to support it? The sword depicted on one side, and the shield on the other, would have been equally meaningless, but for the story of the men in disguise, and the officers of the high rank who evidently must have been deputed to carry it through. The proclamation, so evidently false, is, for that very reason, one of our truest and more reliable expositors of conspiracy, and of Musselman conspiracy too. It is, in fact, impossible to account for it under any other hypothesis. Who then was it that designed and wrote the proclamation? This question, I believe, could be answered in every detail by the editor of the paper, who has recurred to it so frequently. It is evidently a pet subject of his—

one on which he seems to be thoroughly at home. He has the exact transcript of it, is able to epitomize it, and no doubt was equally well informed as to the preparation of it.

I do not mean to wade through and to quote all the extracts from the newspapers that bear out the fact of a Mohammedan conspiracy. That appears to me unnecessary for I believe I shall have no difficulty in establishing it by other testimony. However there is one other extract, which it would be wrong to leave unnoticed. It bears date the 13th of April, and must have been the origin of the report that Sir Theophilus Metcalfe alludes to, when he says that about fifteen days before the outbreak, it was currently reported that an anonymous petition had been presented to the Magistrate, stating that the Cashmere Gate of the city would be taken from the English. This being the chief stronghold in the city and main connection with the cantonments of Delhi it would naturally be the first point seized in any attempt at insurrection in the city and being the only gate at which there was any military guard, the importance of it in a strategical point of view, must have been obvious to all. Sir Theophilus Metcalfe proceeds to say that this petition was never received, but that the current report about it was indicative of what was then occupying the thoughts of many of the natives. So, no doubt, it was; but it was also much more than this, for it was the real exposition of an article which the editor dare not, without disguising it put into print. With what ingenuity and craft the idea it worked out, so as to become intelligible only to those who were meant to understand it must now be obvious to all. The editor says several petitions have been given into the Magistrate's Court, and in these it is also mentioned that 'a month hence from this date an overwhelming attack will be made on Cashmere, of the salubrity and beauty of which a poet has said—'That should a parched and burnt up soul reach Cashmere, though he might be a roasted fowl, he would recover his wings and feathers, and that this cool and heavenly country will come into the possession of the writers of the petition.' How it may be asked, were the writers of the petitions given into the Magistrate's Court at Delhi to take Cashmere, and who does not now perceive that the Cashmere gate of the city of Delhi was thus indicated by the country from which it derives its name, and that the salubrity and beauty of the former were to represent the importance and its fitness for their objects of the latter. I will not here pause to consider whether, under the simile of a parched and burnt up fowl the prisoner before us was intended. He no doubt expected to recover some of his lost plumage by seizing the gate, and with it was meditating flight to a higher elevation. In declaring on the 13th of April that in one month from the date an overwhelming attack would be made on this very point—for it was here the officers were shot down—the editor of the *Authentic News* was either the confident and accomplice of conspiracy or had shared into the regions of actual prophesy.

The coincidence of the above cautiously worded announcement of the editor, and indiscreet revelations of Jawan Bakht are certainly startling. The doubly foretold attack took place on the 11th of May, and after what has been proved in regard to Mohammed in treachery, is there any one who hears me that can believe that a deep planned and well-concerted conspiracy had nothing to do with it?

The proofs of the intimate connection of the prisoner with it do not however, rest here for Mousud, the Abyssinian, who was not merely in the service of the King but was his private special attendant and was always near his person, takes Mr Everett aside and tells him that he had better leave the Company's service and with his troop, go over to the King as this hot weather the Russians would be all over the place. Mr Everett seems to have laughed at this and to have thought it but the man's foolishness but we have now direct proof that it was something far

deeper than that, for at their next meeting, which occurred about a month after, the outbreak had been accomplished. Moujûd says to him, "Did I not tell you to come away?" and then, as it were in explanation of the warning, proceeds to reveal to him the whole of the Sîdî Kambar transaction how two years before, he had been sent to Constantinople as ambassâdor from the King of Delhi—how he had started on the pretence of going to Mecca, and how he had promised that he would return when the two years had expired. This explanation seems to me a very remarkable one. It shows clearly that it was not merely on the basis of an expected disturbance at Meerut that such a proposal was made, but that a far wider web of sedition was weaving. Who can now believe that none of the Mohammedan native officers and men of the regiments at Delhi and Meerut had been tempered with? Mr Everett, as a Christian, was surely one of the last the conspirators would apply to. It should be remembered likewise that Mr Everett had none of his regiment with him at Delhi, and that had there been any Mussulman officer of the corps present, they would doubtless have been preferred to a Christian. At the time too when the application was made to him, the sentence of the Meerut court-martial must have been unknown in Delhi. It was not, then, as a consequence of, but as an addition and an adjunct to, what was anticipated at Meerut, that preparation was being made here, and by whom was this being done? Could a mere private servant and personal attendant, however great favourite he might be, offer service to a misalदार and a whole troop of cavalry, withdrawing their allegiance from the Government, without any authority for so doing, for his master? Who could have given the King's service to so large a body, but the King himself? I would beg those who hear me seriously to consider these questions and then determine whether the answers to them do not bring home personal complicity in compassing the rebellion, to the prisoner in Court. We have been informed by Mukand Lal, the secretary, that it is now about three years since some Infantry soldiers stationed at Delhi became disciples by the King, and that, on that occasion, the King gave each of them a document detailing the names and order of those who had preceded him in the direct line of disciples to each other, himself included, together with a napkin dyed pink as an emblem of his blessing. Now three years ago from the present date is about the time of Sîdî Kambar's embassy to Persia, and of the apparent first commencement of Mohammedan conspiracy, and it certainly is a somewhat instructive fact to find that the occasion chosen for such an unwonted manifestation of piety on the one hand, and such an unusual display of kingly condescension on the other, was precisely that in which intimate relations between them of a more political character were beginning to be thought of. The Agent of the Lieutenant Governor of course put a stop to these exhibitions, but from that day, adds the witness it may be said that a sort of understanding was established between the army and the King. I think it will be conceded that in addition to the charges, five facts have been established, viz, the concerted dreams and predictions of Hasan Askari the priest, the mission to Persia and Constantinople of Sîdî Kambar the Abyssinian, a deliberate continuous plan of exciting distrust and revolt among the Hindus, a similar plan, by the fabrications of the native press, for inciting the Mussalmans to a religious war, and lastly by these means and others, an indirect and also a personal tampering with the fidelity of the Hindus and Mussalmans of the native army. Has or has not a guilty participation in all these five points been traced to the prisoner? If the question, (as I believe it will be), should be answered in the affirmative, there will still remain another to be responded to, of perhaps still greater importance, viz Has he in these transactions been the leader, or the led, has he been the original mover, the head and front of the undertaking, or has he been but the consenting tool, the willing instrument in the hands of others, the forward, unscrupulous, but still pliant puppet, tutored by priestly craft for the advancement of religious bigotry? Many persons,

I believe will incline to the latter. The known restless spirit of Mohammedan fanaticism has been the first aggressor, the vindictive intolerance of that peculiar faith has been struggling for mastery, seditious conspiracy has been its means, the prisoner its active accomplice, and every possible crime the frightful result. It was however rather as the head of the Mohammedan religion in India, than as the descendant of a line of Kings, that I believe the prisoner's influences were deared the one indeed is so inseparable from the other, that it is difficult to say where the difference commences. It was the union of the two—the religious and the political—that gave such importance to the prisoner as one of the abettors of conspiracy.

Thus the bitter zeal of Mohammedanism meets us everywhere. It is conspicuous in the papers, flagrant in the petitions, and perfectly demoniac in its actions. There seems indeed scarce any exemption from its contagious touch. The Prince Mirza Abdulla robbing his confiding visitor and former friend, and then sending his uncle to compass her death seems no exaggerated instance of it. It is again represented by the Mohammedan officer, Mirza Taki Beg at Peshawar who, while in high employment and pay by the British Government, complacently quotes from his books that a change will take place, and that the British rule will soon be overthrown. It finds a still more unmistakable disciple in Karim Baksh of the Delhi Magazine, who, while drawing English pay, avails himself of his scholarship and knowledge of Persian to send circulars to the native regiments, to the effect that the cartridges prepared in the magazine had been smeared with a composition of fat and that the sepoys were not to believe their European officers, if they said anything in contradiction of it. It will be recollected how active in his enmity this man proved when the King's troops were attacking the magazine how he kept up a secret communication with them and how completely he identified himself from the commencement with the conspirators. Can there be a doubt that he was one of those who had been successfully tempered with, that while ostensibly serving the English, he was, in reality, in the pay and confidence of those seeking their destruction?

But why multiple instances of this sort? I would gladly cite some of a different tendency, and the petition of Mohammed Darwesh in this admirable letter to Mr Colvin, must not be passed over. It is one noble instance of faithfulness from a Mohammedan to the British. I am sorry I cannot class with it the petition purporting to be from Nabi Baksh Khan to the King, pronouncing it unlawful to slay women and calling for a decree to that effect from the doctors of the Mohammedan religion for since I delivered the paper into court considerable doubt has been thrown on its having been written at the time indicated and it seems by no means improbable that it was fabricated after the capture of Delhi for the purpose of obtaining rewards and other advantages. Indeed, a further attentive perusal of it has convinced me that it is so for no one in the situation of Nabi Baksh Khan would have dared to advise or propose to the King to let the soldiery first wreak their rage on his own royal person, as Nabi Baksh Khan pretends to have done. There are certainly a few instances in which the Mohammedans have behaved with kindness to the English and not the less pleasing on account of the humble grades in which their instances occur. We may perhaps deduce from this, that the teachings, such as are prescribed by their prophet, have no softening effect on the hearts of his followers nay more that education in such doctrine leads to ferocity and revolting crime, and is utterly incompatible with feelings of even ordinary humanity.

In the course of this address I have dwelt long and frequently upon these circumstances which appear to demonstrate that to Mussalman intrigue and Mohammedan conspiracy we may mainly attribute the dreadful calamities of the year 1857. I have endeavoured to point out how intimately the prisoner at the

head of the Mohammedan faith in India, has been connected with the organisation of that conspiracy either as its leader or its unscrupulous accomplice I have alluded to the part taken by the native press and Mohammedans, in general, as preparing the Hindus for insurrection, and the native army, in particular, for revolt, and perhaps in further corroboration of such facts, it may be as well to advert to the share that may be assigned to the Mohammedans in getting the cartridges refused on the parade ground of the 3rd Light Cavalry. Out of these 85 troopers, the far larger moiety was Mohammedan. These men had no caste, and to them it could not possibly have mattered whether pig's and cow's fat was smeared on the cartridges or not. Captain Martineau tells us that at the Ambala depot, as far as the cartridge question was concerned, the Mohammedan sepoys laughed at it, and we thus perceive that these men initiated open mutiny without one pretext for so doing, for the shadow of an excuse. They had not even the extenuation of a pretended grievance, yet they at once, leagued themselves in rebellion against us, and induced the Hindus to join them, by speciously exciting them, on that most vulnerable of points, the fear of being forcibly deprived of their caste. I say, induced the Hindus to join them, for such is the evidence before us, and this too on a pretext in which the Mohammedans could have had no possible sympathy with them. Nor indeed were the Hindus long in discovering this, for as a witness, who has been frequently quoted, informs us, "immediately after the battle of the Hindan, they spoke with much regret of the turn that affairs had taken, reproached the Mohammedans for having "deceived them, and seemed to doubt greatly that the English Government had really had any intention of interfering with their caste. Great numbers of the Hindu sepoys at this time declared that, if they could be sure their lives would be spared, they would gladly go back to the service of the Government but the Mohammedans, on the contrary, used to assert that the King's service was much better than that of the English, that the Nawabs and Rajahs would supply the King with large forces, and that they must eventually "conquer." If we now take a retrospective view of the various circumstances which we have been able to elicit during our extended enquiries, we shall perceive how exclusively Mohammedans are all the prominent points that attach to it. A Mahommedan priest with pretended visions and assumed miraculous powers. A Mahommedan King, his dupe and his accomplice—a Mohammedan clandestine embassy to the Mohammedan powers of Persia and Turkey resulting—Mohammedan prophecies as to the downfall of our power—Mohammedan rule as the successor of our own. The most cold blooded murders by Mohammedan assassins—a religious war for Mahommedan ascendancy—A Mohammedan press unscrupulously abetting—and Mohammedan sepoys initiating the mutiny. Hinduism I may say, is nowhere either reflected or represented, if it be brought forward at all, it is only in subservience to its ever aggressive neighbour.

The arguments in reference to a Mahommedan conspiracy are now closed. I do not mean that many others might not be deduced from the proceedings before us, for I have selected only those that appeared to me the most prominent. I would wish, however, before sitting down, to quote one question and answer from Captain Martineau's evidence—"Did you ever hear any of the sepoys speak complainingly of the efforts of English missionaries to convert natives to Christianity?" Answer—"No, never in my life, I don't think they cared one bit about it." I believe there is no officer whose duties have given him much experience of the sepoy's character or any insight into his feelings and prejudices, but will readily confirm the correctness of this opinion. There is no dread of an open avowed missionary in India. It is not the rightful conversion to Christianity, that either sepoys or natives are alarmed at. If it be done by the efforts of persuasion or teaching, or of examples—the only means by which it can be done, it offends no caste prejudice, excites no fanatical opposition. A candid undisguised endeavour to gain followers to Christ has never,

that I am aware of, been viewed with the slightest sign of disapprobation of any portion of the natives and were it more constantly before their eyes who can doubt that it would remove this present dark and debasing error that Christianity is itself a caste, and its only distinguishing tenet the privilege of eating everything. If this degrading ideas were removed the chief fear of the Hindus would vanish with it. Let them see that it is impossible to make converts to Christianity by force, and you deprive the seditious of their most patent weapon of mischief. Christianity, when seen in its own pure light has no terrors for the natives. It is only when kept in the shade that its name can be perverted to an instrument of evil. But I may, if I proceed further, the trenching questions of State policy. I beg then to tender my thanks to the court for the patient hearing they have given me, and to Mr Murphy, the Interpreter for the able assistance he has in that capacity afforded me on this, and the other State trials. His very high attainments as an oriental scholar have been most conspicuous. In the fluency of *visa voce* examinations in the quick readiness with which all kinds of papers, in different hands, have been deciphered and read and in the correctness and spirit of the written translations of documents of no ordinary difficulty his complete knowledge both of Urdu and Persian has been thoroughly attested. The notes appended to many of these papers are valuable in themselves and speak more forcibly than I can do of Mr Murphy's very high proficiency as an Interpreter. I should be wanting both to him and myself if I did not thus record my obligations to him.

Delhi, 9th March 1858,

F J Harriott, Major

Dy Judge Advocate General and Govt Prosecutor

FINDING

The court is closed to consider its findings.

The Court, on the evidence before them, are of opinion that the Prisoner Mohammed Bahadur Shah, Ex-King of Delhi, is guilty of all and every part of the charges preferred against him

M Dawes, Lt. Col, President

Delhi, 9th March 1858

F J Harriott, Major,

Deputy Judge Advocate General

Approved and Confirmed

N P Penny Major General

Commanding Meerut Division

Camp Saharun 2nd April 1858

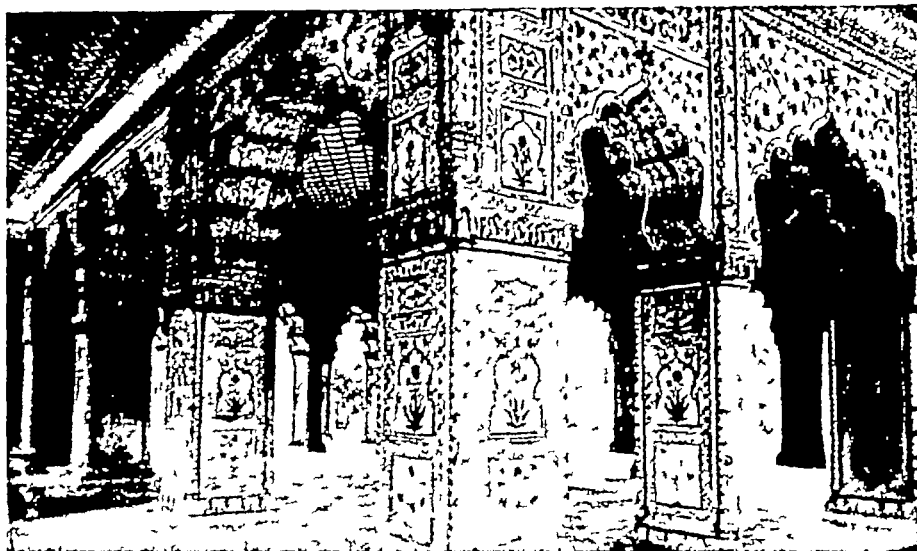
The Court adjourns at 3 p m. *ante die*

—(End)—

Bahadur Shah was sentenced to transportation for life and was deported to Rangoon, where he died in 1868



A view of the Diwan-e-khas where Bahadur Shah's trial was held





Subhas Chandra
Bose reading
Proclamation

(Exhibit FFFF)

← Exhibit KKKK



Dr Miss
Lakshmi
(art of Exhibit
LLLL) →

APPENDIX

The publisher is indebted to Colonel Bobb of the Public Relations Directorate, G H Q, for releasing the findings of the General Court Martial, and the order of the Confirming Authority for publication in this volume. These documents are not usually made public because of the provisions of the Indian Army Act

FINDINGS

- No IC 58 Capt. SHAH NAWAZ KHAN, 1/11 Punjab Regt. att CSDIC (I), Delhi, is guilty of the first charge and is guilty of the tenth charge.
- No IC 226 Capt P.K. SAHGAL, 2/10 Baluch Regt att CSDIC (I), Delhi, is guilty of the first charge and is not guilty of the third, fifth, seventh and ninth charges.
- No IC 336 Lieut G.S. DHILLON, 1/14 Punjab Regt att CSDIC (I) is guilty of the first charge and is not guilty of the second, fourth, sixth and eighth charges

SENTENCE

The Court sentence the accused —

No IC 58 Capt SHAH NAWAZ KHAN, 1/14 Punjab Regt att. CSDIC (I) Delhi

No IC 226 Capt. P K. SAHGAL, 2/10 Baluch Regt att CSDIC (I) Delhi

No IC 336 Lieut G S DHILLON, 1/14 Punjab Regt att. CSDIC (I) Delhi to

be cashiered and
to suffer transportation for life and
to forfeit all arrears of pay and allowances
and other public money due to them at the time
of their cashiering

Signed at Red Fort, Delhi, this thirty-first day of December 1945

F C A KERIN,
Col,
(Judge Advocate)

A B BLAXLAND,
Maj Gen,
PRESIDENT

I reserve confirmation of the findings and sentence to H.E the Commander-in-Chief in India.

Delhi,
Dec 31, 1945.

L L THWAYTES,
Brig,
Comd Jumna Area

CONFIRMATION

I confirm the findings and sentences of the Court in respect of all the accused, but remit in each case that part of the sentence which relates to transportation for life.

Signed at New Delhi this second day of January 1946

C J AUCHINLECK,
GENERAL,
Commander-in-Chief in India

The copies of the following letter which was produced by Lt.-Col. Squire were not on the file of Mr Bhulabhai Desai, or Sir Naushirwan Engineer. The publisher is grateful to Col Bobb who was kind enough to supply this document. The publication of the book had to be delayed for more than two weeks in order to include this letter and a certified copy of the findings and the order of the Confirming Authority which were released for publication in this volume under the Authority of the War Department, Government of India

5 R.

CONFIDENTIAL

GENERAL HEADQUARTERS

UNITED STATES ARMY FORCES PACIFIC

Oct. 26 45
APO 500

CZ/49

Adv Ech

The Director of Military Intelligence,
GHQ INDIA.

Japanese Government-I.N.A. Documents

Reference Armundia signal 26246/CS of Oct. 9

1 In accordance with the request contained in the above mentioned telegram the Japanese Government was asked to produce original documents covering the following

- (a) Treaty between the Provisional Government of Free India
- (b) Understanding regarding treatment of Supreme Command I.N.A. and the Imperial G.H.Q. in Nov 44.
- (c) Declaration made by Tojo and other Government members concerning Indian independence between 1942 and 1944.

2 A reply has now been received from the Japanese Government through the Central Liaison Office, copy of which is attached hereto together with annexures A, B, C and D

3 A copy of the gist of the memorandum concluded between the Japanese Imperial GHQ and Mr Subhas Chandra Bose has already been forwarded to you in our CZ/49 of Oct 24

Lieut.-Colonel, ✓
British Staff Section.

Copy to D of I, HQ SACSEA

Compared with original. True Copy
Sd A.B. Marland
Major-Genl
President

Annexure A, B, C and D marked SSSS, TTTT, UUUU and VVVV on pages 370 and 371

